

500-09-001296-912

500-09-001297-910

Cour d'Appel

Montréal

En appel de deux jugements rendus le 26 juillet 1991, par l'honorable juge Jean-Jude Chabot, de la Cour supérieure, district de Montréal.

Nos: 500-09-001296-912 C.a.M. - 500-05-009755-883 C.s.M.

LE PROCUREUR GÉNÉRAL DU CANADA

APPELANT-Intimé

c.

RJR-MacDONALD INC.

INTIMÉE-Requérante

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

MIS EN CAUSE-Mis en cause

Nos: 500-05-001297-910 C.a.M. - 500-05-009760-883 C.s.M.

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APPELANT-Intimé

c.

IMPERIAL TOBACCO LTD

INTIMÉE-Requérante

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

MIS EN CAUSE-Mis en cause

D O S S I E R C O N J O I N T

Volume XLVII: pages 9102 à 9288
(Dépositions)

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TABLE DES MATIÈRES

	<u>Vol.</u>	<u>Page</u>
<u>Le 4 avril 1990</u>		
REPRÉSENTATIONS	XLVII	9102
Vol. 57 - pp. 8653 à 8656		
<u>PREUVE DE L'INTIMÉ À L'ENQUÊTE (SUITE)</u>		
MICHEL LAROCHE		
Vol. 57 - pp. 8657 à 8680		
	En chef par	
	Me Baker	XLVII 9109
	Contre-int. par	
Vol. 57 - pp. 8680 à 8683	Me Potter	XLVII 9132
Vol. 57 - p. 8683	Décision (expert)	XLVII 9135
	En chef par	
Vol. 57 - pp. 8684 à 8726	Me Baker	XLVII 9136
	Contre-int. par	
Vol. 57 - pp. 8726 à 8809	Me Potter	XLVII 9178
	Contre-int. par	
Vol. 57 - pp. 8809 à 8836	Me Thibaudeau	XLVII 9261

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CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

COUR SUPÉRIEURE

SOUS LA PRÉSIDENTE DE L'HONORABLE JUGE JEAN-JUDE CHABOT, J.C.S.

No: 500-05-009755-883

RJR-MACDONALD INC.
Requérante

c.

LE PROCUREUR GÉNÉRAL DU
CANADA
Intimé

No: 500-05-009760-883

IMPERIAL TOBACCO LIMITÉE
Requérante

c.

LE PROCUREUR GÉNÉRAL DU
CANADA
Intimé

4 avril 1990 - Vol. 57

COMPARUTIONS :

Pour la requérante
RJR-MACDONALD INC.

M^{re} COLIN K. IRVING,
M^{re} GEORGES R. THIBAUDEAU,
EARL A. CHERNIAK, Q.C.,
M^{re} MICHEL A. PINSONNAULT,
Avocats

MACKENZIE GERVAIS
Procureurs

Pour la requérante
IMPERIAL TOBACCO LIMITÉE

M^{re} SIMON V. POTTER,
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Pour l'intimé
LE PROCUREUR GÉNÉRAL DU CANADA

M^{re} ROGER E. BAKER, Q.C.,
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PAUL EVRAIRE, ESQ.,
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CÔTÉ & OUELLET
Procureurs

8651

I N D E X

	<u>Pages</u>
PROOF OF RESPONDENT	
Dr. MICHEL LAROCHE	
Examination on expertise	8657
Cross-examination (Me Potter)	
8680 Examination-in-chief	8684
Cross-examination (Me Potter)	8725
Cross-examination (Me Thibaudeau)	8809

8652

LIST OF EXHIBITS

		<u>Pages</u>
AG-226	Curriculum Vitae of Dr. Michel Laroche. . . .	8683
AG-227	Table 12-1 of the book: <u>Marketing Management</u> by Phillip Kotler	8691
AG-228	Chart with "Exhibit 2": Observed Patterns of sales trends during maturity stage of life cycle.	8694
AG-229	Figure I, types of product life cycle patterns.	8705
AG-230	"Breakfast cereals in Canada," per capita consumption	8708
AG-231	Chart: Coffee market, Canadian per capita consumption	8710
AG-232	Rapport par Michel Laroche, Ph.D.: Role, Nature, Fonction et Effets de la Publicité des Entreprises de Produits de Grande Consommation.	8755
ITL-41	Article "Product Life Cycle Research," a Literature Review by David R. Rink and John E. Swan.	8776
ITL-42	Extrait du livre, "Gestion de la Publicité," Jacques E. Brisoux, Ph.D., René Y. Darmon, Ph.D., Michel Laroche, Ph.D. pp.551 à 557 . .	8808
RJR-180	"Advertising Management in Canada," René Y. Darmon, Ph.D., Michel Laroche, Ph.D., extraits pp. 179 à 181.	8819
RJR-181	"Advertising Management in Canada," René Y. Darmon, Ph.D., Michel Laroche, Ph.D. p. 253 .	8821
RJR-182	"Advertising Management in Canada," René Y. Darmon, Ph.D., Michel Laroche, Ph.D. Extraits pp. 242 à 246.	8829
RJR-183	"Advertising Management in Canada," René Y. Darmon, Ph.D., Michel Laroche, Ph.D., extraits pp 343 à 358	8829

In the year of Our Lord nineteen hundred and ninety (1990),
on this fourth (4th) day of the month of April, PERSONALLY
CAME AND APPEARED:

5 Me GEORGES R. THIBAudeau

on behalf of Petitioner, RJR-Macdonald Inc.

Pour la requérante RJR, Colin Irving et Georges
Thibaudeau.

Me SIMON V. POTTER

10 on behalf of Petitioner, Imperial Tobacco Limitee,

Et pour Imperial, Simon Potter.

Me ROGER E. BAKER, Q.C.

on behalf of Respondent

15 Et pour le procureur général, Roger Baker, Claude Joyal
et Lise Tremblay.

Me IRVING:

My Lord, before we begin this morning, there were two
(2) small matters that we have to deal with.

20 And first of all, we have now bound up RJR exhibits
one eleven (11) to one fifty (150) for the Court. I say
"we" taking, of course, the credit which is due entirely
to Mr. Mitchell.

25 The second item concerns the sittings next week.
I understand, from having spoken to all my friends that
on our side and on the Attorney General's that there

would be no objection to beginning on Tuesday rather than Monday. And I had asked if that was possible because I had been asked to be in Toronto on Monday for something else. So that if it was convenient to the Court, and considering we only have one (1) witness, Dr. Chandler, who will be easily finished in the time available next week, I wonder if the Court would agree to sit Tuesday rather than Monday of next week?

THE COURT:

No problem, but can we do it in three (3) days?

Me BAKER:

If we couldn't, I am assuming, I haven't discussed this with -- I didn't discuss it with Mr. Irving last night when he called me. I assume if we were not to sit on Monday, it would be continued through -- oh, Friday is a holiday.

Me IRVING:

Friday is a holiday, but I can see no ...

THE COURT:

Well, I'd be surprised we couldn't finish him by three (3) days, but...

Me BAKER:

I would be surprised too, but vraiment, Votre Seigneurie, je ne le prends pas pour acquis. Moi, je ferai de mon mieux de ne pas retarder, mais je ne peux

pas vous donner une garantie.

THE COURT:

No, well, what Mr. Irving had told me before is that they thought that they would have a two (2) hour, approximately, cross-examination, so...

Me IRVING:

Two (2) to three (3) hours, but not more.

Me BAKER:

If that's the case, then we'll finish in three (3) days.

THE COURT:

Okay. Good. So Tuesday instead of...

Me IRVING:

Thank you very much, My Lord.

Me BAKER:

My Lord, again, just before we begin, a little more kitchen work. We filed yesterday the Vantage ad under AG-225, it was a photocopy which was faxed. We've had the original Purolated from Vancouver, the "Smoke Smart" ad, and on the verso you'll see page one forty-four (144), Chatelaine, March, nineteen seventy-nine (1979). Dr. Pollay is in the room. If necessary, we'll put him back in the box. I don't know that it will be. And I think we should substitute the original for the faxed copy that you now have as the exhibit. Bottom left.

Me IRVING:

Well, I have no objection to this being substituted, My
Lord. What is the exhibit number again, please?

THE GREFFIER:

5

AG-225.

Me IRVING:

225. Thank you.

In the year of Our Lord nineteen hundred and ninety (1990),
on this fourth (4th) day of the month of April, PERSONALLY
CAME AND APPEARED:

5 MICHEL LAROCHE, being forty-five (45) years of age, residing
at [DELETED]

WHO, having been duly sworn on the Holy Bible, doth depose
10 and say as follows:

THE COURT:

Vous pouvez témoigner dans la langue que vous préférez,
dans laquelle vous serez...

15 R- J'ai choisi l'anglais parce que toute la référence est
en anglais, donc c'est plus simple, plutôt que je
fasse... je fasse l'aller-retour, là. C'est difficile
de travailler dans deux (2) langues à la fois. Je
préfère travailler dans une langue.

20

EXAMINATION BY Me ROGER E. BAKER, Q.C.

On behalf of the Respondent:

Q- Would you be good enough to open your curriculum vitae
at the first page? My Lord, I believe you may have been
25 given a copy of a new curriculum vitae. You have not

5 been given this, fine. There was a slight change, we
 have been given the changes by Dr. Laroche, but I'm
 going to work off the old one because I haven't made the
 correlation between the new document and the old and the
 new one has only some minor changes; so we'll work off
 the one you have in front of you.

THE COURT:

Good. Engineer and Doctor in Philosophy.

Me BAKER:

10 Q- Dr. Laroche, your first degree of higher education was
 as a diplome d'Ingénieur?

A- That's correct.

Q- When you graduated in nineteen sixty-nine (1969), were
 you, in fact, an engineer?

15 A- Yes, I was.

Q- What was the course of study involving, engineering
 purely or managing of engineering?

A- Okay. The Ecole Centrale des Arts et Manufactures is
 one of the grandes ecoles in France and the one that's
20 better known, who is our competitor, is called Ecole
 Polytechnique but we are at the same level that they
 are. And you basically go through a set of preparation
 of three (3) years which they call "La Taupe," where you
 study math and physics and all kinds of topics and then
25 you go through an entrance examination which is very

difficult and then you have a three (3) year program in the Ecole Centrale; and during the three (3) years, you study all kinds of engineering topics and there's a specialty at the end where you can have a course of study, and the one (1) that I chose was applying mathematics to business.

Q- I see. When you graduated from the Ecole Centrale in Paris, you went to Johns Hopkins University, where I see in nineteen seventy-one (1971) you got a Master of Science and Engineering?

A- That's correct.

Q- Would you describe that briefly?

A- Yes, I enrolled into the Johns Hopkins program because they were well renowned in the field of operation research and I studied there for operation research as a major and economics as a minor while I specialized two (2) courses in econometric business.

Q- Now, what do you mean by operations research, Doctor?

A- Okay. Operation research is a term that is used to describe mathematics applied to a business topic. It came out of the work that was done during the war and became a full-fledged field after the second war.

Q- M'hm. I see you got -- became a Doctor of -- both a Master of Philosophy and a Doctor of Philosophy at Columbia University. What were the disciplines that you

studied?

5 A- I enrolled into the business administration program at Columbia University and I majored in production at the beginning. My minor was marketing but I ended up doing my dissertation in marketing under the direction of Dr. Johnny Howard who is a well-known professor of marketing in the U.S.

Q- What was the subject of your dissertation?

10 A- The subject of my dissertation was to -- to provide a nonlinear test of the model of consumer behaviour. The model had been described up to that point in general terms and some of the empirical work that was done up to the time of my dissertation was using linear analysis, you know, just proportional presentation of the
15 different concepts, the variables. In other words, if you increased attitude with the intention increased proportionally, the intention to purchase.

20 What I did is I took a more general view and tried to develop a nonlinear representation of that model in which I would allow -- it was an empirical test and I would allow nonlinear variations in the variable. Otherwise, as you increased attitude with the intention increased proportionally, and what I found is it did not.

25 Q- Now, Dr. Laroche, I'd like you to turn briefly to page

five (5), you see professional experience prior to January one (1), nineteen seventy-nine (1979). Associate professor, graduate programs in management, Simmons College, Boston. Was that your first teaching experience?

A- No, my first teaching experience was at Laval University in Quebec City in nineteen seventy-four (1974).

Q- I see. Just below it, yes.

A- Yes. I graduated in nineteen seventy-four (1974) from Columbia and my first job was at Laval University in Quebec City, and I stayed there for two (2) years and then became associate professor in the graduate program in management at Simmons College in Boston.

Q- M'hm. Now, you've been teaching at Concordia since nineteen...

A- Seventy-nine ('79).

Q- ...seventy-nine ('79). What courses do you teach there?

A- Well, I've taught, over the years, a number of courses. I've taught the Marketing Management, which is the intro-marketing course, both at the undergraduate and the MBA level. I've taught Marketing and Society, which is an MBA level. A corresponding course in the undergraduate for the seminar, it's called Consumerism, I also taught. I have created a course called Seminar in Marketing Communication and a Seminar in Advertising

Management, which are both MBA courses. I've also taught the course in Consumer Behaviour, Seminar in Consumer Behaviour, and I've taught continuously the course called Advertising and Sales Promotion Management...

Q- M'hm.

A- ... and also created another one called Advertising Strategy and Planning.

Q- I'm looking at page three (3) of your curriculum vitae and I see under research grants: recipient of two (2) sixteen thousand (\$16,000) and one (1) twenty thousand (\$20,000) dollar F.C.A.C. research grant with V.H. Kirpalani and René Darmon. Could you tell the Court what that was about, please?

A- Yes. F.C.A.C. is a granting agency in Quebec that provides a research grant for a Quebec researcher, and that's called the Fonds FCAR, and that grant was a Standardization of International Advertising Campaign. It was an attempt to see how a multinational company standardized -- if they standardize it and how they standardize a campaign in a different country and what is the role of the headquarters in influencing different subsidiaries in the advertising...

Q- I see.

A- ...over the years.

Q- And further down on the same page, still under research grants, I see the last item: recipient of a twenty-seven thousand and fifty-five dollar (\$27,055), SS HRC research grant. Effects of Attitudinal and Behavioral Dimensions of Sub-culture on Consumption Behaviour. What was that about?

A- Okay. Yes. SS HRC is called the Social Sciences and Humanities Research Council of Canada, and that's the federal body that provides research grants to academics to do research. That was the first year actually. My new c.v. shows that we also were awarded another two (2) year grant by SS HRC and a three (3) year grant from the Fonds FCAR to do the same kind of study. And what we're trying to do here, is we're trying to look at what's happening to Canadians as they assimilate into other cultures. As they become more assimilated, do they change their consumption behaviour? Do they adopt patterns of consumption that are proper to the other culture.

Q- M'hm. Further down, on the same page three (3), under Service to professional associations, I see: President of the Administrative Sciences Association of Canada, 1985, 1986.

A- Yes, that's correct. I've been involved with...

Q- Could you briefly describe that?

5 A- I've been involved with ASAC, what we call ASAC, which is the Administrative Sciences Association of Canada for a number of years. I first became the chairman of the marketing division, actually the program chairman in the marketing division, where I developed the marketing program for the ninety-two ('92) conference. Then I became the chairman of the division the following year. In nineteen eighty-three (1983), I came into the executive board as a vice-president and membership chairman. I organized the nineteen eighty-five (1985) conference in Montreal and I became president of the association in nineteen eighty-five (1985) for one (1) year, the one (1) year term, and past president in nineteen eighty-six (1986).

15 What the Administrative Sciences Association of Canada is -- is the association of all academics in business administration except for accounting. So it covers all areas, including finance, management -- it covers about eight (8) divisions now.

20 Q- Now, Dr. Laroche, I would ask you to turn to page four (4). And I see that you've served as an expert witness in a case of Wabasso v. BASF Wyandotte Corporation, et al. Could you tell the Court briefly what that testimony was about?

25 A- Yes, that was a case involving a product, a problem with

a product. It was a dye that was used in the making of sheets for Wabasso. And what was alleged in this case, I don't know for a fact, was the dye was causing a rash to people sleeping in those sheets.

5 Q- What was...

A- Especially when they were nude.

Q- What was your role?

A- My role was to look at the problem that -- the effect on market share of Wabasso in the sheet market in Canada following the negative publicity that followed these problems.

10 Q- I see.

A- So there was a short-term negative publicity and Wabasso was alleging in its case was that negative publicity caused them some sales.

15 Q- I see.

A- So my role was to see if the negative publicity did have an effect on the sales.

Q- I see.

20 THE COURT:

On both sides -- on whose side were you?

A- Oh, I was -- I was asked by Ogilvy Renault to look at ...

Q- No, no, but...

25 A- ...from BASF.

Q- BASF?

A- BASF.

Q- I see.

Me BAKER:

5 Q- That doesn't put you in any form of conflict in respect
of a cross-examination today, Mr. Barnes?

Me BARNES:

It doesn't bother me if it doesn't bother Mr. Laroche.

A- It doesn't bother me.

10 Q- All right.

Me BAKER:

You mean he might be biting the hand that fed him at one
time?

Q- Further down, or just below the reference to BASF...

15 A- Yes.

Q- ...you see: "J.P. Bélanger contra BIC et al."

A- Yes.

Q- You served as an expert witness in that litigation as
well?

20 A- Yes.

Q- And very briefly, what was your role as an expert
witness in that case?

A- Okay. This case was trying to relate the notion that
when a manufacturer lends his brand to another
25 manufacturer or another business, which is, in this

case, was a company that was making vending machines. Okay, in this case was BIC. And the vending machines were -- contained some BIC lighters. And the fact that BIC was all over the vending machine, did that indicate that BIC was behind the business that was selling those vending machines to investors. The companies that did sell the vending machines were fraudulent and they went out of business after the investors started to complain, and the only company left to sue was BIC. So BIC was sued and the allegation was that because they lent their name to that company, that they would be liable for whatever misrepresentation that was made to the investors by the vending machine company.

THE COURT:

Your role in that?

A- Okay. My role was looking at -- was on the BIC side, to look at whether a brand name used within the context of a business implies that the manufacturer is beside -- is -- how can I say -- endorsing the business -- what the business is doing.

Me BAKER:

Q- I see.

A- That's -- in other words: what is the role of a brand name. That was the crux of the case.

Q- Now, if we could turn to your publications?

A- Yes.

THE COURT:

There's another one: Canadian Newspaper contre Ville de Montreal.

5 Me BAKER:

Whoops!

THE COURT:

Yes.

A- Okay. Canadian Newspaper versus Ville de Montreal was
10 to look at the role of a national newspaper, that was
the Globe & Mail, and whether a national newspaper could
survive in the Montreal environment without having the
assistance of a distribution system by the way of
vending machines. So what the Globe & Mail wanted is
15 the authorization to have vending machines on the
street, and then following Mayor Drapeau initially and
then Mayor Doré continued...

Me BAKER:

Q- And your role?

20 A- ...the Ville of Montreal was -- my role was just to
explain to the Court how a national newspaper like the
Globe & Mail can survive and go in the context of an
urban city.

Q- I see.

25 A- Yes.

Q- Now, if we could turn to page ten (10), to the bibliography of publications.

A- Yes.

Q- The second...

5 THE COURT:

By the way, it took me as much as long to read your curriculum vitae as to read your report.

Me BAKER:

Now we know where your interest lies, My Lord.

10 A- Actually there are three (3) more pages in my revised one.

Q- No, it's all right. That wasn't necessarily an invitation, Dr. Laroche.

The second to last item on page ten (10).

15 A- Yes.

Q- A model of attitude change in groups following a persuasive communication. An attempt at formalizing research findings, behavioral science.

A- Yes.

20 Q- Nineteen seventy-seven (1977). Very briefly, could you tell the Court what that article was about?

A- Okay. That article is an attempt to do a meta analysis.

Q- A what?

A- A meta analysis. Which is to use information from a
25 variety of sources. What I've done is I've looked at a

large number of research findings and I've used the empirical data to develop a general model and to propose a model of attitude change.

Q- M'hm.

5 A- And that was to validate that model.

Q- I see. At page eleven (11), just under the note, nineteen eighty (1980).

A- Yes.

10 Q- I see Michel Laroche and John Howard, nonlinear relations in a complex model of buyer behaviour.

THE COURT:

Where are you?

Me BAKER:

15 Where you see on the left-hand side going down, My Lord, it's just under nineteen eighty (1980).

THE COURT:

Right. Okay.

20 A- Yes. That paper was a paper related to my dissertation. It was actually a first attempt at what I did in my dissertation, to try to use Dr. Howard's model and to try to develop a nonlinear representation of that model. So it was an empirical paper.

Me BAKER:

Q- Looking at the behaviour of buyers?

25 A- Yes. Looking at the model of buying behaviour that was

developed by Dr. Howard.

Q- M'hm.

A- Which is called a Howard-Sheth model of buyer behaviour.

Q- And if we could turn to page fifteen (15). The second
5 item down, Michel Laroche, a method for detecting
nonlinear effects in cross-sectional survey data, the
International Journal of Research and Marketing. What
was that about, Dr. Laroche?

A- Yes. This paper described in detail the methodology
10 which I developed based on the work of a statistician,
to -- in my dissertation -- to do the -- to measure the
nonlinear effects; to detect them and to measure them.
And that's why I start with detecting nonlinear effects.

It's an attempt at curve fitting and to try to --
15 it's a methodology that develops the curve fitting
methodology, and to indicate the shape of the form, the
function, and to measure that shape.

THE COURT:

It's a method for criticizing econometrics study, isn't
20 it?

A- Well, it doesn't relate to econometric studies. It's
mostly influenced with time dimension. This is just
anything. It's just two (2) variables. It could be the
relationship between attitude and intention or between
25 blind comprehension and attitude change and those kind

of ...

Q- Okay.

A- ...and we have additional problem in survey data is that we're using data that is not continuous.

5 Q- Okay.

A- So, I mean, as in the scale -- on the scale of one (1) to seven (7) where we're measuring, really, and it's a noncontinuous scale, it's a discrete scale. And these methods apply very well to these kind of scale.

10 Q- Okay.

A- So it was not a new method, per se, but it was invented early in the nineteen hundreds (1900s) by a statistician called Fisher, Professor Fisher, that's an English statistician, and I extended it. I've used it and extended and applied it in a way that he didn't intend initially.

15

Me BAKER:

Q- Further down, on page fifteen (15), the item begins:

20

Nancy J. Church, Michel Laroche and Jerry Rosenblatt, "Consumer Brand Categorization for Durables with Limited Problem Solving: an Empirical Test and Proposed Extension of the Brisoux-Laroche Model," Journal of Economic Psychology.

A- Yes.

25

Q- Could you describe to the Court what that discussion was

about?

A- Yes, this is one (1) of -- of many papers that I worked on a paradigm called the Brand Categorization Paradigm Model, and it's referred to as the Brisoux-Laroche Model, and basically it tries to come to grips to the --
5 how consumers react to a brand preferation situation. In other words, when they're facing thirty (30) brands on the shelves, how do they really react to that. The economists assume that consumers have perfect
10 information, and this is to try to -- to understand how they process that information -- how many brands they would look at and so on. So that's a model that has been developed over the years and it's been...

Q- Referred to as...

15 A- ... a constant stream of research of mine.

Q- Yes.

A- Brisoux was one (1) of my doctoral students at Laval so we started working on that since ...

Me BAKER:

20 Q- So why did you put his name first?

A- Because...

Q- That's okay.

A- No, no, it's just that we normally do when we work in team, we put them in alphabetical order.

25 Q- I see.

A- But it was basically a paradigm which I developed.

Q- At page sixteen (16), Doctor, again I -- the very last item, I see Michel Laroche, Jerry Rosenblatt and Jacques Brisoux, Consumer Brand Categorization, Basic Framework and Managerial Implications, Marketing Intelligence and Planning?

A- Yes.

Q- I take it Marketing Intelligence and Planning is a Journal?

10 A- Yes.

Q- Where?

A- Yes. It's published in England.

Q- I see.

A- Yes.

15 Q- Could you tell the Court briefly what that paper was about?

A- Okay, this paper was a conceptual paper. What it did, it took the brand categorization paradigm as it was developed and explains in general terms, and really tried to indicate to managers how they can use it and what kind of decisions they can make depending on the situation their brand is in the marketplace.

20 Q- At page nineteen (19), the third item down from the top. Lise Héroux, Michel Laroche and K. Lee McGown, Consumer Product Label Information Processing, an experiment

25

involving time pressure and distraction, Journal of Economic Psychology. Could you tell the Court briefly what that article is about, Doctor?

5 A- Yes, this article explains an experiment that we did, trying to see how much information consumers will remember from various ads if he can manipulate the time pressure and the distraction effect.

10 In other words, they're given ten (10) seconds, twenty (20) seconds, thirty (30) seconds. So you vary the amount of time they're allowed to look at the ad and then you also vary the distraction. In other words, you let them look at it without saying anything or you talk at the same time to distract them a little bit or you can use, you know, play some music to do a bit a little
15 bit of distraction.

So we can manipulate the distraction effect and the length of time that they're allowed to look at it and see whether or not they receive it -- they get less information from advertising as they're distracted.

20 Q- At page twenty (20)...

THE COURT:

The result was yes?

A- Well, the result was fairly complex and it varies with age, and we also found that there was a point where the
25 total amount of information will decline as -- as you

have more information. So they -- they will reach a maximum and start declining if you give them more information, which is a finding that other researchers have found.

5 If you give too much information to consumers at a certain point, it will have some negative effect, dysfunctional effect. Some information will not be remembered or even it will lead them to make wrong -- make wrong decisions in terms of the best product to
10 choose.

THE COURT:

I'm sorry, what page did you say, Mr. Baker?

Me BAKER:

Twenty (20), My Lord.

15 Q- The fourth item down from the top on page twenty (20), Gurprit Kindra, Michel Laroche and Thomas E. Muller, Consumer Behaviour in Canada Concepts and Managerial Action. That is a textbook, Dr. Laroche?

20 A- Yes, that's correct. The textbook that was published last year.

Q- M'hm. Is that distributed in some of the universities in this country?

A- Yes.

25 Q- And the very last item on that page, Carole Duhaime, Kindra and Laroche and Muller, Comportements de

Consommateurs, is that simply a French version of the earlier work?

5 A- Well, it's -- it's an adaptation to the Quebec environment. The English version was taking a more general than Canadian approach. What Carole Duhaime, who is a new author in the text has been asked to do is to take the original text and adapt it to the Quebec environment.

Q- M'hm.

10 A- I'm trying to do that in a systematic fashion. Every time I write a book in English, I try to get the similar version in French published.

THE COURT:

It's been published now?

15 A- No, it's in the works.

Q- It's in the forthcoming...

A- She's a little slow, she had a baby...

Q- The other one has been published?

20 A- Yes, the first one has been published. This one is in the works. Carole had a baby in the meantime and it has been postponed until next -- I think towards the end of this year it will be published.

Me BAKER:

Q- Do you mean you gave her more than seventeen (17) weeks?

25 A- Yes.

Q- I see an item in the middle of the page: Darmon, Laroche and McGown, Market Research in Canada. Is that the one that you just said -- has that been published now?

A- Yes, Marketing Research in Canada has been published.
5 It's the first -- as for the consumer behaviour, it's the first original text in Marketing Research in Canada.

Q- M'hm. And then, just below that, I see Darmon, Laroche and McGown again: Instructor's Manual to Accompany Marketing Research in Canada, has that -- has that been
10 published now?

A- Yes. Yes, for every book that you have to publish in -- it's a textbook. For every textbook, you often have to publish an Instructor's Manual about as big as the original book, sometimes bigger, and sometime we have to
15 publish a third item, which is a study guide, which we did for the intro-marketing book, which is a guide for students to learn the material.

Q- And then, below that, I see Darmon, Laroche and Petrof: Marketing In Canada Management Perspective, third
20 edition?

A- Yes, that's correct. This has been published too last year at the same time. All three (3) came out last year.

Q- I see. You're going to be filing your tax return soon.

25 A- Well, I only get rates on those books, but...

Q- Now, reference was made yesterday, I think, to advertising management in Canada, Darmon and Laroche.

A- Right.

Q- Where is that on this page, I don't see it?

5 A- This was published in nineteen eighty-four (1984), this one. It was published in nineteen eighty-four (1984), I believe.

Q- M'hm.

10 A- It's on page fourteen (14). It was published in nineteen eighty-four (1984) and the French version was published in nineteen eighty-six (1986), I believe, and it is called Gestion de la Publicité, and that would be -- no, eighty-seven ('87), page seventeen (17).

Q- And you have also published in...

15 A- This is...

Q- Darmon, Laroche and Petrof, you've listed as Marketing in Canada Management Perspective? When...

A- Yes. That would be the second edition.

Q- This is the second edition -- published when?

20 A- That was published in nineteen eighty...

Q- Here it is.

A- ...nine (1989). So it would be eighty-five ('85), probably.

Q- No, nineteen eighty-one (1981).

25 A- No, the first time it was published was nineteen

eighty-one (1981). This is the second edition, it was published in nineteen eighty-five (1985).

Q- Thank you.

THE COURT:

5 Okay, what is it called?

Me BAKER:

Marketing in Canada and Management Perspective.

A- In nineteen eighty-five (1985).

THE COURT:

10 Okay.

A- And the third edition just came out last year. And the fourth edition came out -- French, came out this year, about a month ago.

Me BAKER:

15 My Lord, I have no further questions. I offer Dr. Larocche as an expert witness.

Me POTTER:

20 My Lord, I only have one (1) or two (2) questions just -- not at all to challenge your expertise, Doctor, but just to find out where you're not an expert.

CROSS-EXAMINATION BY Me SIMON V. POTTER,

On behalf of the Petitioner, Imperial Tobacco Limitée:

25 Q- I take it that you're not an expert psychologist, you haven't studied psychology?

A- Well, I've studied psychology since nineteen seventy (1970). In other words, I've read about it. My -- Doctor Howard, I believe, is a trained psychologist. Most of my research is in consumer behaviour...

5 Q- Yes, but what kind of a...

A- Well, psychologist in the sense of consumer behaviour. I'm reading -- I've read and I've done research since nineteen seventy (1970) on consumer behaviour, which is really using psychological concept and applying it to the marketing field.

10 Q- Well, good, that's exactly what I want to get to. I understand that your specialty is looking at the behaviour of large groups of people, it's not looking at the behaviour of one (1) individual, is it?

15 A- That's correct.

Q- So you're -- you're not an expert on how any one (1) individual reacts to any influence, are you?

A- No, my work is within the marketing context, and marketers deal with markets.

20 Q- Yes.

A- Basically.

Q- So you deal with markets but you don't deal with individuals?

A- No.

25 Q- No. And am I right Dr. -- is it Dr. Laroche?

A- Yes.

Q- Yes. Am I right, Doctor, in thinking that though you are very well written and widely written, you've done a lot of work, you're a very well recognized academician, you are not a practitioner of advertising? You haven't worked as an advertiser, have you?

A- As -- in advertising agency?

Q- Yes?

A- Not within advertising agency. I've had contact in dealing with advertising agencies...

Q- Sure.

A- ... and I've done some work, some copy research for...

Q- Have you ever had to run an advertising campaign?

A- No.

Q- Have you ever had to develop an advertising campaign?

A- Well, yes, in the sense that I require all of my students --and I've done that for the last ten (10) years -- as part of their course, whether it's the undergraduate level or the MBA level, to develop a complete advertising campaign from start to finish.

Q- I see...

A- So I have about one -- I have about one hundred and fifty (150) reports in my office that were done by students.

Q- Done by students.

A- Yes.

Q- Have any of these campaigns been actually put into practice?

A- I wouldn't know.

5 Q- No? Thank you.

THE COURT:

Do you have, Maître Irving or Maître Thibaudeau, any questions?

Me IRVING:

10 No.

Me BAKER:

My Lord, I'd like to produce the curriculum vitae of Dr. Laroche as AG-226.

THE COURT:

15 So, Dr. Laroche, you're recognized as an expert in your field of expertise. C'est sybillin comme phrase.

Me BAKER:

My Lord, before I begin the questioning with Dr. Laroche, you will know from having read his report that it is a very broad gauged report which was intended, when it was commissioned about a year ago, to cover the spectrum, we not knowing at that time what understanding or what testimony would have been laid before you, of course, by the time Dr. Laroche got up to testify. I believe it would be a waste of your time and futile to

20

25

5 follow the report, more or less from the beginning to
the end, because much of what is in it, you already
know, whether with more precision or less precision is
not of great relevance in this discussion. It's that
you certainly have enough understanding from the
testimony that's already been presented to know what
marketing strategies are, what segmentations are, and
what all of those things are, so we have no need to, nor
do we intend to bore you with that kind of testimony.

10 That having been said, I am going to lead you right
into...

THE COURT:

By the way, it's very well written, and clear and
concise.

15 Me BAKER:

Yes, and he's mad as hell at me that we're not going
through the report, but...

THE COURT:

20 I assure you I've read it with great interest. It's
very well written and I've read it at the beginning so I
could understand as the trial went on anyways.

EXAMINATION BY Me ROGER E. BAKER

on behalf of Respondent

25 So we are going to do, My Lord, is deal with the issue
of the mature market, which you will find referenced at

page -- the beginning of it at page fifteen (15) of Dr. Larocche's report.

5 Q- Now, Doctor, since the beginning of the trial, you've attended from time to time and you have read some of the expert's opinions, reports on the other side. And you've heard the expression "mature market" used. Could you explain to the Court what this phrase means in the marketing field?

10 A- Yes. Well, in the marketing field we don't really talk about mature markets, per se. Maturity is a stage in what we call the product life cycle concept. So most writers in marketing will talk about the, what we call the "PLC" concept, or product life cycle concept.

Q- Where does it come from, this concept, Doctor?

15 A- Okay. The PLC concept is really an analogy. If I may quote from Robert D. Buzzell, from the Harvard Business School.

Q- You're quoting from what journal?

A- This was from a conference proceedings.

20 Q- M'hm.

A- On page fifty-one (51) of this article...

Q- Hold on just for a moment.

A- Yes.

Q- I'm going to circulate a copy of this document.

25 A- On page fifty-one (51):

"The origins of the product life cycle model
-- the exact origins of the product life cycle
model are unknown. The basic idea of an
S-shaped curve probably ..."

5 -- in italics --

"... originated with the work of a
sociologist, Gabriel Tarde, around 1900.
Tarde found a general pattern of this kind in
the history of the adoption of innovations.
10 In 1920 the biologist, Raymond Prescott
published the result of his studies of
population growth. Prescott found the same
basic S-curve could be used to describe the
growth of population of single cell organisms
15 and insects as well as long-term trends in the
human populations of nations of the world.

His work attracted considerable attention
and the S-curve came to be called the law of
growth because it seemed to be applicable to
20 so many different kinds of growth."

Q- M'hm.

A- So basically, it's an analogy to a biological concept,
the growth of an insect, and this biological origin
analyzed some basic premises of the original concept,
25 because, of course, this concept, as I will -- this

concept has shown a lot of flaws. But in the original formulation, the premises of this concept were that death was inevitable, you had to die, so product came into the market, he had to eventually die.

5 Q- Right.

A- That there were some distinct phases of -- in distinct phases that, like an insect will go through, you know, birth and growth and being mature and dying. And that those phases have to be followed in sequence. There was
10 a sequence of events that had to take place over time.

So that's the biological analogy that was used later on. But nowhere in the first initial description of the product life cycle concept was it ever suggested that this was something that was God given or immutable
15 in marketing or in business.

Q- Could you tell us...

A- It was just an analogy.

Q- M'hm. Then why was it adopted in marketing? Or, in other words...

20 A- Yes.

Q- ... what was the rationale for using it ...

A- Okay.

Q- ...in the business world...

A- Yes.

25 Q- ... if it was used at all?

A- Okay. Like all analogy, it was just used as some kind of a help to the decision-maker, and also to help to teach the concept to somebody who is dying.

5 Now, before the use of the PLC marketing, the PLC concept in marketing, there were markets, products were being born, the market was evolving, okay. All those conditions there are in describing the PLC were there, were known. What happened is that you had to describe every situation to students. You say: well, if you have
10 this kind of condition, this is what you would do.

So when the PLC was used initially, it was a neat way, okay, probably later on, not to be that neat, but at the time it was a neat way to you know categorize different types of situation. To tell the students that
15 if you are in certain situations, this is what you should do. In kind of a road map, but very rough road map with some mountains and valleys and rivers and basically saying that if you're going, you know, if you're going somewhere, you know on a pedagogical tour, as a pedagogical tour, if you know that during the
20 growth phase, for example, you know that something is going to come later on. So you can plan for it.

Q- Was it equally used as a planning tool outside...

A- Yes.

25 Q- ... of the pedagogic area, Doctor?

5 A- Yes. It was, as it was explained in business schools
and people tried to use it. Four (4) students took that
concept and tried to use it also as a planning tool in
the sense that they were taking the concept and the
different conditions under each phase is in and then use
that as a planning tool. In other words, looking
forward to see what would happen to the market and
preparing themselves for conditions or decisions to be
made in the next phase or along the way in the crutch
10 phase, et cetera, et cetera.

Q- Doctor...

A- So it was used as a planning tool, yes.

Q- How many phases are there in the original PLC concept?

A- The original PLC concept contained four (4) phases.

15 Again, with the same analogy. You had an introduction
phase, you had a growth phase or take-off phase, and
then you had a maturity phase and a decline phase. So
there were four (4) phases in the original concept.

Q- Are you referring to the S-curve at all?

20 A- Yes. The S-curve, that's correct.

Q- All right.

A- The S-curve with a growth curve and...

Q- Do you have an example of that with you?

A- Yes.

25 Q- Just take your time.

A- It's having an example that...

Q- Just hold on for a second. Now, you have just handed the Court and you have in front of you something called Table 12.1. Where is this from, Dr. Harris?

5 A- Yes. This was from a book by Philip Kotler and Turner. Turner was a Canadian group, Canadianized Kotler. But the original book was published by Philip Kotler. And it's called: "Marketing Management."

10 Q- Now, what are the implications of this curve for management?

A- Yes. Yes, okay. What this table summarizes is that for each phase you have a number of characteristics for the market: market, consumers, competitors. You have the marketing objective, what is the task of the marketer for each phase and general task, and then you have the strategy that they follow, according to what we call the four (4) Ps of marketing -- which is the product, the price, promotion and the place, which is the distribution. So you have a different strategy to each phase.

20 So as I say, it was a neat idea initially. And what they did is encapsulate certain situations and conditions and just told manager, that if you are in certain situations, this is what you should do, okay.

25 So it was basically a -- pedagogical tools, it was

like crutches, you know, if you have somebody who has difficulty walking, you give him some crutches. It doesn't mean he's going to run the marathon.

Q- Could we file Table 12-1 as AG-227.

5 Now, you've described what I think you called the original product life cycle concept, PLC concept. Has this shown any validity in the real world?

A- Okay. Well, unfortunately, as I mentioned earlier, it was a neat idea. It was a simple idea. It was just an analogy. It was a help to the decision-maker. But as people started to look at the concept a number of problems started to arise. And when they tried to fit the concept to the reality, they found a number of problems. And those problems can be classified into three (3) categories. There were conceptual problems, there were empirical problems and there were managerial problems.

10

15

Q- Okay. What were the conceptual problems?

A- Okay. The conceptual problem was, for a writer, mostly in the academic field. Looking at the concept, and all its implication and trying to analyze what's happening in each phase; and they very quickly realized that conditions at different parts of each stage will vary considerably, and to try to salvage this concept they start making it more complicated.

20

25

5

10

So some people, like Wasson, for example, added a phase called the competitive turbulence, which is at the end of the growth phase. Some other people, and including myself in that one, because it's a diagram that's in my report, took the maturity phase. And the present maturity phase is such a broad phase, and so many things can happen, you can cut it down into two (2) phases which I call maturity and saturation, and the flat part of the curve I call saturation. And Wasson also called it saturation.

15

Q- I'll stop you at growth maturity for just a moment and ask you to refer to Buzzell.

A- Yes.

Q- I believe at page fifty-three (53); is that correct?

A- Yes, that's correct.

20

Q- Now, do I take it that the chart, just before we get into the substance of it, you have taken from the Buzzell article...

A- That's correct.

Q- ...that you referred to earlier?

25

A- Buzzell at page fifty-one (51).

Q- At page fifty-three (53).

A- That's right, fifty...

Q- Three, I believe.

A- Fifty-three (53), that's correct.

5 Q- It was blown up simply for ease, My Lord. Now, what do you mean, in reference to this chart, by growth maturity?

A- Well, growth maturity -- and some people use the word maturity to mean -- to mean growth maturity, and I
10 include myself in that group, to mean that when the sales continue to grow but at decreasing marginal returns, but the market is still growing. And, actually, a third -- if you look at that diagram, the third pattern on top is a variation on the growth
15 maturity phase which is called innovative maturity, is when you accept categories of products that are introduced, okay? And one (1) very good example of that is the nylon example. When the nylon, product nylon that was introduced by the Dupont company, and it
20 reached maturity at about fifteen million (15,000,000) pound, I believe -- yes, fifteen million (15,000,000) pound -- and it was thought to be mature, and by successive -- introduction of successive new uses, including stockings and so on, the market reached five
25 hundred million (500,000,000). So, it was not the

ceiling -- the apparent ceiling, at the time, was multiplied by ten (10) -- by a factor of ten (10).

THE COURT:

By innovations?

5 A- By innovations, that's correct. That's why it's called innovative maturity.

Me BAKER:

Q- I see. Could we produce this chart, which is marked at the bottom itself in the print, as Exhibit 2 -- but it's
10 Observed Patterns of Sales Trends during Maturity Stage of Life Cycle as AG-228.

Now, you said, when I asked you earlier if the proposition of the PLC had any validity or had shown validity, you said there were three (3) kinds of
15 problems: conceptual, empirical and managerial. You've just finished conceptual. What were some of the empirical problems, Doctor?

A- Okay, only on -- there has been quite a bit of empirical research and I must say this empirical research has died
20 in the last ten (10), twenty (20) years. I haven't seen anything recently about it in terms of empirical research but as -- as the concept was starting to -- to be developed, some people started to experiment and to see if by looking at different product category, they
25 could find if that S-curve, the S shape, could be found.

5

10

15

And so in a number of cases and -- but the large number of documents that have been published, mostly in the sixties (60s) and early seventies (70s), that attempted to validate empirically the PLC curve or the S-curve and they found problems from the very start, and to try to salvage it some people started to categorize different kinds of curve, which is -- I mean, which is -- just to try to salvage it, just to say well, the S-curve is not always -- you can always find the S-curve. The other kinds of curves and, I think, I believe, it was found from seventeen (17) different kinds of curve and the three (3) major work that we can quote here is Dhalla and Yipseh, the Marketing Science Institute and the Rink and Swan Literature Review that was done, which is an extensive review of the literature.

Q- All right, I first ask you to refer to the Dhalla and Yipseh article.

Me POTTER:

20

Excuse me, Mr. Baker, are we going to give the Buzzell article a number?

Me BAKER:

25

No, I'm not filing this as an exhibit, I'm just circulating them for ease of either comprehension or cross-examination if you wish, Mr. Potter. It's in the general literature.

Q- Now, to begin. Dhalla and Yipseh have written an article called "Forget the Product Life Cycle Concept".

A- That's correct. In the Harvard Business Review.

Q- In the Harvard Business Review of January, February,
5 nineteen seventy-six (1976).

A- That's correct.

Q- I'm referring you to page one fifteen (115) -- or excuse me, one fourteen (114) ...

A- Yes.

10 Q- ...and ask you to refer the Court to their principal findings or some of their principal findings?

A- Yes, yes, one (1) -- one (1) important sentence or paragraph is at the top of one fourteen (114).

15 "Most writers present the PLC concept in qualitative terms, in the form of idealization without any empirical backing. Also, they fail to draw a clear distinction between product class, product form and brand. But for our purpose it doesn't matter. We shall
20 see that it is not possible to validate the model at any of these levels of aggregation."

Q- Just for clarity's sake. After the word product class in the sentence you've just read, Doctor.

A- Oh, yes, example...

25 Q- For an example, e.g. cigarettes?

A- Yes, those are examples.

Q- Yes, I know that.

A- Or examples, yes, that's correct.

Q- You're purporting to cite it so I want the record to be
5 accurate.

A- Sure.

Q- After form, parenthetically, appears: e.g. filter
cigarettes, and after brand, parenthetically: e.g.
Winston.

10 A- Yes.

Q- Now, you were going to refer the Court...

A- To the -- the para -- the text under unpredictable
variations...

Q- M'hm.

15 A- "And the problems that were found in the
empirical studies that with the exception of
non-filter cigarettes, year-to-year variations
make it difficult to predict when the next
stage will appear, how long it would last and
20 to what levels the sales will reach."

Okay.

Q- Now...

A- And the second one, the second one:

25 "One cannot often judge the accuracy in which
phase of the cycle the product form is, which

is even more damaging. And thirdly, the four
(4) major phases do not divide themselves into
clearcut compartments. In the further quote
from original premises, you can see that those
findings tend to invalidate the original
premises. And then they on to quote that the
Marketing Science Institute which starts under
one of the most thorough attempts to validate
the PLC concept or product classes and product
forms was carried out a few years ago by the
Marketing Science Institute. The authors
examine over one hundred (100) product
categories in the food, health and personal
care fields and measure the number of
observations that did not follow the expected
sequence of introduction, growth maturity and
decline."

Okay, and then you have:

"The hypothesis was ..."

-- skip a sentence if you like, just how they did it by
using random numbers:

"The hypothesis was that the PLC concept had
some raison d'être only if he was capable of
explaining sales behaviour better than a
chance model could. The outcome of this test

was discouraging. Only seventeen percent (17%) of the observed sequence in product classes and twenty percent (20%) of the sequences in product form was significantly different from chance."

And then I think you should read the conclusion from the study.

"After completing the initial test of the life cycle expressed as a viable model of sales behaviour, we must register strong reservation about its general validity even stated at its weakest, most flexible form. In our test of the model against real sales data, it has not performed uniformly well against subjective standards over a wide range of frequently purchased consumer products nor has it performed equally well at different levels of product sales aggregation. Our results suggest strongly life cycle concept, when used without careful formulation and testing as an explicit model, is most likely to be misleading than useful."

Q- Thank you, Doctor. Now...

THE COURT:

But yet you -- yet you retain the life cycle -- product

life cycle curve...

A- As a...

Q- ...in your report.

A- As a pedagogical tool, yes.

5 Q- But it's in your report too?

A- Yes.

A- As a pedagogical tool, not as a forecasting tool, as a pedagogical tool. In other words, you cannot use it to make a decision. You can use it to give you some
10 guidance but not as a model to help you make a decision, important decisions.

Now, in the empirical field, I think I mentioned three (3) studies that were -- that were widely quoted literature, the Dhalla and Yupseh, the Marketing Science
15 Institute and the Rink and Swan. Now, Rink and Swan did, again...

Me BAKER:

Q- Who are -- who are Rink and Swan?

A- Rink and Swan published an article in the Journal of
20 Business Research. They were both academics. That study is based on Rink -- David Rink's dissertation, if I remember correctly, and it was a literature review and was so important, that's why it's widely quoted in the literature, is that -- that article looked at
25 seventy-one (71) sources. If you look at page five

hundred (500) -- I'm sorry, have you distributed...

Q- No, I haven't.

A- In the Rink and Swan -- I must preface my discussion,
the fact that many of those people are very partial to
5 the product life cycle. They like it in a sense, and
like it that some of their writing is based on it, so I
understand there's an emotional attachment to it and
what they try to do, is salvage it in a sense. They're
not literature to review -- tends to look at different
10 topics for being the research literature and, to salvage
it, they come up with Figure 1 on page four eighty
(480).

Q- Four hundred and eighty (480).

A- They come up with twelve (12) different curves.

15 Q- Hold on for just a moment. We have blown that chart up,
My Lord, a copy of which is being handed to you now.

A- Again, it's an attempt to salvage it and -- so now,
instead of having one (1) curve, we have twelve (12)
curves. Twelve (12) possible curves so -- and if I were
20 manager, I would be lost, not knowing about the market.

Q- What is the meaning of the twelve (12) different kinds
of charts, what's the purpose of having twelve (12)
charts?

A- Well, it's to -- to try...

25 Q- I'm confused looking at all the charts.

A- Yes, it's just to account for the -- for the data that was -- the kinds of data that we're finding in the real world, and in trying to fit the curve this is what they found. So the classical curve is the first one.

5 Another one that was find is what they call the cycle, recycle. In other words, the curve start to decline and something else happens and a multiplication of the product happens, it's a recycle. You have a cycle, half cycle. You have a curve, increasing sales, decreasing sales, just straight. High plateau, low plateau. We have stable maturity, growth maturity, innovative maturity -- which we talked about before -- sales growth, decline plateau -- which is the duration again -- and then rapid penetration without introduction phase.

15 Q- So then the cycles can fit no precise mold. And is that what these different charts indicate, Doctor?

A- Yes, indicates that -- that if you're looking for guidance in terms of what's happening in the marketplace, you'll be lost. You know, you can only find out after the fact what cycle -- what curve you're in so in that sense...

20 THE COURT:

You know what bothers me with that is that you're rewriting your report, and that bothers me. When I read

your report at page sixteen (16), seventeen (17) and eighteen (18), I have the impression that you adopted the idea of product life cycle?

A- As a pedagogical tool.

5 Q- And at page eighteen (18), you say that the evolution of the cycle will depend, essentially, on decisions taken by all companies?

A- That's a major point.

10 Q- So there are decisions taken upon the life cycle products and...

A- No.

Q- ...they will depend on those decisions to either modify the level of maturity or the phase of maturity.

A- That's correct.

15 Q- That's what it says in your report?

A- That's correct.

Q- Now, you're telling me that the product life cycle is just purely a view of the mind.

A- Yes.

20 Q- Or it means absolutely nothing. It's quite different from what you're saying in your report, I must say.

A- Not really, if I may explain. What I was describing up to now is how it was originally formulated and it was tested in the field, the kind of results that we found,
25 and then we haven't covered the major aspects, which is

my third element in there, and then I'm going to -- I would like to explain how it was -- it was -- it's been used up to now in the literature since -- and I said, there's no empirical work going on right now.

5 In other words, people most widely in the field, have accepted its limitation. They're only using it as -- as a simple pedagogical tool and a simple planning tool. That sentence that you read basically says that the shape -- and this is a very important point because
10 nowhere in the original formulation does it ever say that the shape of the curve is unchanging and immutable.

Q- No, but that's...

A- A God given and what it says there, is that the shape is basically affected by all the decisions that are made by
15 all the companies, and those decisions can change -- change the curve, and I will talk about the way you can change the shape of a curve by making decisions. I haven't got to that point. What I basically was trying to explain...

20 Me BAKER:

Q- Which -- hold on for just a moment. If -- with Your Lordship's indulgence, if we might be permitted to continue Dr. Laroche was going to address that problem that you raised.

25

THE COURT:

Go on.

Me BAKER:

Q- Could we file the last document to which you referred,
5 Figure I, as AG-229?

Me IRVING:

Mr. Baker, may I ask, is the article: "Forget the
Product Life Cycle," like the Buzzell one, just handed
for reference, it's not going to be filed?

10 Me BAKER:

None of them are being filed. They're just filed as a
matter -- given to you as a matter of courtesy.

Me IRVING:

Thank you.

15 Me BAKER:

Q- Now, speaking of empirical problems or empirical
evidence, Dr. Laroche, have you looked at the cereal
market...

A- Yes, I have.

20 Q- ...for example, in Canada?

A- Yes, I have.

Q- Now, you have in front of you a chart encaptioned:
"Breakfast Cereals in Canada Per Capita Consumption."
Your sources were Statistics Canada?

25 A- Yes, this is information provided by Statistics Canada.

Q- Now, relating to the discussion under review, Doctor, if one looks at the curve or the line between nineteen sixty (1960) and nineteen seventy-six (1976), what determination do you make?

5 A- Nineteen seventy-six (1976) that would...

Q- From nineteen sixty (1960)...

A- Yes.

Q- ...through nineteen seventy-six (1976), approximately.

A- Well, I can say from nineteen sixty (1960) to
10 seventy-one ('71), it was either stable or declining.
Then there's another recycle coming up in nineteen
seventy-one (1971). Then again, in nineteen -- yes,
stop -- then there's a recycle in seventy -- seventy
('70) to seventy-six ('76). And then after seventy-six
15 ('76) then you see an increase in sales.

Q- Okay. Now, as I look at...

THE COURT:

In consumption. An increase in consumption.

A- In consumption, sorry. Per capital consumption.

20 Me BAKER:

Q- So the appearance of the line in the chart, Doctor, from nineteen sixty (1960) to approximately nineteen seventy-six (1976), you would describe as what?

A- Well, from nineteen -- if I were looking at the chart, I
25 would say nineteen seventy-one (1971), okay.

Q- M'hm.

A- I would say that the market has reached a plateau and started to decline.

Q- M'hm.

5 A- Okay. In nineteen seventy-one (1971). So I may, as a manager, and that becomes a managerial problem, if I'm manager I may decide that the market is saturated and if I use a product life cycle concept blindly, I will consider that the market is saturated, right. And what
10 happened, that we launched the market with the introduction of new innovations or the introduction of new features. And that's one of the cycle modification strategies that I can discuss.

But what happened in those days is the -- the use
15 by manufacturer of some health concern about cholesterol, cancer, et cetera and the introduction in cereal of fibre, bran, oats and all kinds of other additions.

I mean, when I grew up oats was for horses only,
20 but now you find it in a lot of other products. And that's because it's been established in the medical field that some of those products tend to reduce certain health hazards that people have.

So, building into that, what happened is that the
25 per capita consumption went from three (3) kilos per

person to over four (4) kilos per person within the period nineteen sixty (1960) to nineteen eighty-eight (1988).

5 So if I was only looking in nineteen seventy-one (1971) and not having done some research, not having my research development department looking at adding new features to the product, you know, I would have made the wrong decision, if I had relied blindly on the product life cycle.

10 Q- I'd ask that we file this document as AG-230.

THE COURT:

And it would be a good time to break?

SHORT RECESS

15

Me BAKER:

Q- Now, Dr. Laroche, you spoke earlier of -- when I asked you if the concept that was originally -- as it was originally propounded, had validity, and you referred to conceptual, empirical and managerial problems. What did you mean by managerial problems?

20 A- Okay. Managerials relate to the applicability of the PLC concept in a purely literal way and a number of people have cautioned against that in the field. That you cannot take the concept in a literal way and then

25

use it to make decisions. And I gave, before the break, we have looked at the breakfast cereal market impact on the per capita consumption and indicated that in nineteen seventy-one (1971), for example, a manager that would take this diagram at face value may make the wrong decision and precipitate the decline or death of their brand, which some authors have called a self-fulfilling prophecy.

Basically what happened, in fact, is that the shape of a PLC curve is affected by all the decisions that are made at a given time by all the companies. So the shape is affected by controllable variables, which are the decisions that are made by all the companies in the industry, the distribution decision, the advertising decision, et cetera. It may also be affected by uncontrollable variables, like economic factors. You know, if you have a recession for example, total demand may decline for a short period of time.

Q- Now, Dr. Laroche, in discussing the mature market theory, Dr. Leonard Reid, who was one of the first expert witnesses on the other side, said at page six (6) of his report:

"Since 1975 coffee consumption, like the consumption of alcoholic beverages, has been declining at a steady rate as consumers have

turned to other beverages, particularly soft drinks."

Now, is that true for Canada, for example?

5 A- Not according to the data I've seen from Statistics Canada.

Q- I place before you a chart. You've created this chart yourself?

A- Yes, I have.

Q- From your source, Statistics Canada?

10 A- Statistics Canada, correct.

Q- I see. So would you agree with Reid then, when he says that coffee consumption since seventy-five ('75) has been declining at a steady rate?

15 A- No, in the long-term rate, the coffee consumption has increased and there have been some ups and down in the marketplace. So you have a number of cycles that are coming in, depending on the new innovations that comes into the market, like freeze-dried coffee, decaffeinated coffee and so on.

20 Q- I see. Would you file this copy -- mark it: Canadian Per Capita Consumption -- as AG-231.

What is your own assessment of the product life cycle concept as it was originally propounded?

25 A- Okay. The original concept, in fact, has shown that it has a number of problems and therefore should not be

taken at face value. It's a useful concept to teach students as a pedagogical tool. It's also a useful concept to help managers get a very rough idea of what's coming ahead. And if you look at my report on page ...

5 THE COURT:

Fifteen (15).

A- ...fifteen (15), it's just to try to help to explain the evolution of the market to managers and to help them to make decisions or prepare themselves to make decisions, depending on what's happening ahead, okay. So that when they see -- when they have a new product, they know that if it has been successful, it will take off. If it's not successful, it will die. And so they have a very rough idea of what's coming ahead.

15 And, again, it's an analogy and it's just to -- as a planning tool, it's a simple planning tool, okay.

So, all in all, when you look at all the problems, the pros and cons, the fact that it may be useful in certain situations -- of course, it cannot be used as a forecasting tool -- there are two (2) ways of looking at it. Some people, like Dhalla and Yipseh, they forget about it. You know, it has no usefulness in terms of managers and management decision, and other people have said: well, there's some good points to it, pedagogical, simple planning tool, let's keep it, but let's modify

it, let's modernize it, okay. And I'm one of that group who are of the opinion that you can modernize it and keep using it as a simple pedagogical and planning tool. And...

5 Q- So what is the current status then?

A- Okay.

Q- In today's -- in today's world, of the PLC concept?

A- Okay. The current status, and that's universally accepted among all marketing writers, is that you should change the premise of the PLC concept, okay. One of the first premises, if you remember, is that death is inevitable, okay.

What the experience has shown us is that death is not inevitable. There have been countless examples of brands being rejuvenated, life cycles being extended a hundred years, like Jello, for example, Jello pudding or Jello gelatin. The hierarchy of phases is not inevitable. And we saw some examples that you can have introduction, then you can have growth, you have decline, you can have a regrowth and et cetera. Cycle, recycle example.

So that there's no inevitability in the hierarchy of the phases. There's no way that you can say that the phases follow a logical order and you cannot go back, okay. So you have to show some flexibility in applying

and in using the concept.

Q- Dr. Laroche, I'll refer you to page eighteen (18) of your report.

A- Yes.

5 Q- And then ask you the following question: can the cycle be modified by marketing action?

A- Oh, yes. Certainly.

Q- How?

A- There are many ways the cycle can be modified. And the
10 two major strategic approaches that have been proposed by Igor Ansoff, a well-known academic, is two (2) types of strategies, product development strategy and market development strategy, and those are categories of strategies that can be done to extend, modify, stretch
15 out, whatever terms have been used in the literature, the cycle.

Q- If you would deal first with product development.

A- Yes. Product developments are attempts by marketers to extend the cycle by improving the quality of the
20 product, the new improved Coke Classic, for example, is an example of that. So you improve the quality of the product. A better tasting, more lasting, longer lasting, those kind of strategies.

25 You can also add another feature to the product, okay, to extend the cycle, okay. So you add fibre to

cereal. You take out caffeine from coffee, so you have decaffeinated coffee, so you have a feature improvement and that will be another strategy to extend the market, or you can change the style and have a style improvement strategy, you know, slimmer, longer, bigger, shorter, et cetera.

A- M'hm.

Q- Those are the types of product development strategy that have been used to extend the market.

10 Q- Now, you've also mentioned market development strategies as opposed to product development.

A- That's right.

Q- So could you give the Court some examples of market development strategies?

15 A- Certainly. In market development strategy, the object now is to extend the market to modify the cycle by changing the market. So you -- the marketer will go after new users by -- to find some people who haven't used the product, to use a product, okay.

20 For example, in the cereal market, the number of adults that were not using the product was -- became users of the product. You can try to have people use the product more often in the cereal market, for example, instead of using -- eating cereal three (3) days a week, okay, you get people to eat five (5) days

25

of week.

THE COURT:

It's like the V-8 -- gee, I could have had a V-8.

A- Yes, that's that, that's right.

5 The -- another strategy is to get people to use something more often. Okay, I mean, to use -- to consume more at the same time. So instead of having one (1) glass have two (2) glasses. Another strategy is to expand the market by finding new varied uses. Baking
10 soda, for example, was used only for baking until they found that it had the ability to -- to attract odors. So they ask you to put it in the refrigerator and the freezer and different places where you can -- you had a different use, a different need in responding to a
15 different need. So those are the general types of market development strategy to expand the market.

Me BAKER:

Q- Now, you've described the history of the product life cycle and you've described its present applicability.

20 A- M'hm.

Q- Is it a function, then, of understanding simply that the curve can change?

A- M'hm. Yes, the idea -- the idea, as it's basically conceptualized now by most writers is that you have a
25 general notion of things that are going to happen in the

future, okay. That the shape of the curve is not taken at face value. Because you know that at a certain time during the evolution of the PLC, you may be looking out for opportunities, okay, so during the growth phase, you look out for product development opportunities. They're on -- in the cycle you looked at for market development strategies.

So the idea is not to take the curve at face value but use it in a flexible fashion to try to extend the market.

Q- I understand. Now, Dr. Laroche, I'm going to read to you from page six (6) of the report of Dr. Leonard N. Reid, who says, and I quote -- or who said, and I quote:

"It is a fundamental law of marketing in a mature market that increased sales must come from other brands within a category."

My first question to you, having read you that, is there any such thing as a fundamental law of marketing?

A- Not to my knowledge.

Q- Now, you've been a professor of marketing for how long now?

A- Twenty (20) years.

Q- Twenty (20) years.

A- At least twenty (20) years.

Q- Have you ever, in the literature -- any of the literature that you have ever looked at, seen anything close to the statement of Dr. Leonard Reid, in anything you've ever seen?

5 A- I do not recall ever seeing that statement.

Q- Now, not only the statement but the thought, Doctor?

A- M'hm. Yes, that's correct.

Q- Now, again, Dr. Reid begins his discussion of the mature market theory, or his version of the mature market theory, at page six (6). He runs through page seven (7) to the beginning of page eight (8), and one (1) of his references is Phillip Kotler, Principles of Marketing, third edition, Englewood Cliffs, New Jersey, Prentice Hall, 1986. Now, there's no page reference on that.

15 A- M'hm.

Q- So we don't know exactly where he is referring the reader to. Now, have you read Phillip Kotler's chapter on Principles of Marketing, third edition?

A- Yes, I have.

20 Q- Does -- and I think you've brought it with you, haven't you?

A- Yes, I have.

Q- M'hm. Is that the third edition?

A- Yes, it is, nineteen eighty-six (1986).

25 Q- M'hm. And his discussion of the mature market or the

5

PLC life cycle, product life cycle strategies, is at page three five o (350) of this book. I'm not going to ask you to read from it but I'm simply going to ask you -- and I believe that section goes on for approximately seven (7) pages?

A- That's correct.

Q- Third edition, Mr. Thibaudreau. Does professor -- by the way, who is Professor Phillip Kotler?

10

A- Professor Kotler is a professor of marketing at North Western University. He's the most widely recognized professor of marketing all over the world. I think he's -- his book, Marketing Management, has been translated in a number of languages. He's also one (1) of my major competitors in the Canadian market.

15

Q- Now, you mean for sales?

A- For sales.

Q- For sales. How are you doing?

A- I'm doing fine.

20

Q- Now, in that book which Dr. Reid referenced, do you see anything reflective of the statement of Reid?

A- Not at all.

Q- All right.

25

A- I've looked and looked several times, it's just -- Dr. Kotler treats the life cycle concept in a similar way that I've treated the concept in my own book.

Q- But in fact...

A- But he never mentions anywhere that there is a
fundamental law of marketing with respect to product
life cycle, with respect to any kinds of other issues in
marketing. There's no such a thing as a fundamental law
of marketing.

Q- I see. Now, Dr. Kotler, Phillip Kotler, has written
another book, has he not?

A- Yes, he has written a Marketing Management book, which
is the original book that he wrote in Marketing, and I
have a copy of it here.

Q- This is Marketing Management, Canadian, sixth edition?

A- That's correct.

Q- Phillip Kotler...

A- That's the Canadian version.

Q- ...and Ronald Turner. Now, what does Kotler say -- by
the way, is this a book that is more generally
considered to be more sophisticated than the earlier
book you referred to?

A- Yes, this is a book that is used in the MBA programs,
Master of Business and Administration programs.

Q- M'hm.

A- And he's quite advanced in his treatment of product life
cycle concept in his chapters, fairly sophisticated.

Q- What does Kotler have to say about the PLC in any

connection with what the reference that Dr. Reid may have used it?

5 A- Okay. Well, under -- at page three fifty-one (351), under marketing strategy in the mature stage, it says that:

10 "Many industries widely thought to be mature: autos, motorcycles, television, watches, cameras, were proved otherwise by the Japanese, who found ways to offer new value to customers."

It's on page three fifty-one (351) -- and he goes on to give some other examples -- and he has a section on page three fifty-eight (358) where he talks about the summary and critique of the product life cycle concept.

15 Q- I'm not sure...

A- Three fifty-eight (358). You're looking at the wrong book.

Q- Oh, I'm looking at the third edition. Hold on for just a moment.

20 A- Page three fifty-eight (358).

Q- No wonder I couldn't follow you. Sorry, My Lord.

A- Okay. The first quote is on page three fifty-one (351).

Q- Take your time please.

25 A- Yes, just go back a little bit, the first quote was on page three fifty-one (351), when he discussed the

maturity stage, and under marketing strategies in the mature stage, the first sentence:

"Some companies give up on mature products feeling there's little they can do."

5 And then he goes on to give the example of products or markets that were thought to be initially mature, that were proved otherwise by the Japanese -- and that's why the American industries are in such big trouble today -- and on page three fifty-eight (358), he talks about the
10 various criticisms of the product life cycle concept and on the one (1), two (2), three (3), fourth (4th) paragraph, summary and critique...

Q- Hold on, hold on.

Me IRVING:

15 Is that at page three fifty-eight (358).

A- You're looking at the wrong book.

Q- No, I'm looking at...

Me POTTER:

His pagination is different.

20 Me IRVING:

Kotler, sixth edition, Marketing Management?

A- I'm looking at the Canadian edition.

Me BAKER:

No, that's fine, no, I said it...

25

Me POTTER:

Canadian sixth edition, but it'll be just past there.

Me IRVING:

It's just the page number I need.

5 Me BAKER:

No, no, you're looking at a different book, Mr. ...

Me THIBAudeau:

Could we have copies then of...

Me BAKER:

10 I'm afraid I didn't make copies of this one, I'm sorry,
Mr. Thibaudeau.

THE COURT:

Just show that to the other party and then I'll look at
it.

15 A- This is the very latest book...

Me BAKER:

Q- Hold on, they'll find it.

Me IRVING:

20 You have gone on to page what now? We have the same
text, we just need to get the right page.

A- Yes. Well, it's a critique, it should be towards the
end of the book.

Q- What page in the...

25 The PLC theory has its share of critics, is that
the...

Me BAKER:

Q- Now, you are reading from what page?

A- Three fifty-eight (358), and the fourth -- the last sentence in the fourth paragraph, again he goes over the different criticisms.

"Critics charge that the PLC plateau is an artifact of the marketing strategies used rather than an inevitable course that sales have to follow."

And then he gives an example, and then he goes on to say:

"In other words, product sales do not follow a natural and inevitable cycle as living organisms do."

Q- Now...

A- I must ...

Q- Yes.

A- ...add that when he talks about the product life cycle in that chapter two (2) in a sophisticated fashion, he talks it in the modern way.

Q- I understand. Now, I have read to you very briefly from the Reid written report which, as you know, I focused at page six (6). You also know that Dr. Reid and others in their testimony said that it's a mature market when everybody knows about the product. Everybody knows

about the product. And that's why you can only get people to be brand loyal through your advertising or switchers. That's the purpose of stating the theory the way they have stated it, as you know.

5 A- M'hm.

Q- Now, Doctor, you've been a professor of marketing for twenty (20) years.

A- That actually isn't correct, sixteen (16).

Q- Sixteen (16) years. Thanks for correcting me.

10 A- I've studied marketing for twenty (20) years -- sixteen (16).

Q- Considering the characterization of the mature market by Dr. Reid and others on the other side in this case, do you have any comment on how Reid and they have stated the mature market proposition to this Court?

15 A- Yes, the proposition as stated looks to me like there's a double fallacy into it.

20 First of all, there's nothing in the product life cycle concept, as originally stated or as modified by most academics, to say that you have to have a certain phase, that the curve -- that the level, the ceiling, is already given to the marketplace. And there's nothing in the original formulation that says that, even for except the maturity stage definition, that says that sales have to come from current users of the market.

25

We saw that product modification strategies would attract new users to the market. We know that, even in the maturity stage.

Q- You said there were two (2) fallacies.

5 A- Yes. But the first fallacy is the fact that the statement of -- what do you call it -- fundamental law, is not in the original formulation. And the second fallacy is that there's no indication in the original formulation that sales have to come, even in the maturity phase, from other users.

10 Q- What about the application of the theory?

A- Well, the application of the theories is really related to the first fallacy, in the fact that they've used a very simple concept that is used only for pedagogical purposes and they misuse it in the sense, in the situation, in a way that was not originally intended. That's my assessment.

15 Q- You say in the way that it was not originally intended. What about the way that it's intended in the modern era, as referenced, for example, by Kotler. Has anything changed in that respect?

20 A- Oh, similarly. Similarly, yes.

Q- I have no further questions.

25

CROSS-EXAMINATION BY Me SIMON V. POTTER

on behalf of Petitioner, Imperial Tobacco Limitée

Q- Dr. Laroche, finally we get to speak to each other.

We've been seeing each other for several days.

5 A- Yes.

Q- You've been here for several of the witnesses, haven't you?

A- Yes, I almost thought that I owned that chair over there.

10 Q- Yes. And you've seen several of the witnesses who have come testifying?

A- I've seen some, yes. I've seen some of them, I haven't seen everybody.

Q- Yes.

15 A- And I haven't been to every day of the testimony. I had to go to classes sometimes, too.

Q- You do have classes, do you?

A- Yes, I do.

Q- Yes.

20 A- I have one tonight.

Me BAKER:

Oh, he's not going to be that long. Don't worry!

Me POTTER:

25 Q- And these classes that you give, they are both undergraduate and graduate class?

A- That's right.

Q- And among the graduate classes are -- I think you mentioned a seminar in advertising management.

A- That's correct. That's the class I have tonight.

5 Q- That's right. And is that a graduate course?

A- Yes, it is. It's a course I created.

Q- That's the course you created.

A- I created that course, yes. One of the two (2) courses I created.

10 Q- And in that course do you use one of the books, one of the textbooks that you've written?

A- Yes, I use this one. And currently...

Q- This one?

A- ...I'm using...

15 Q- This one here, Advertising Management in Canada?

A- Yes. Currently I'm using a book by White, Winter, Ziegler and O'Dea.

Q- Yes. And in the one that you wrote...

A- Yes.

20 Q- ...you use the product life cycle?

A- Yes, we just briefly explain it, yes.

Q- Yes. And these people who are coming to learn from you, I take it these are people who eventually one day want to make advertising decisions?

25 A- Well, not really, because MBAs are generalists and most

-- I would say ninety-nine percent (99%)...

Q- That will be...

Me BAKER:

Let him answer the question, please, Mr. Potter.

5 Me POTTER:

Excuse me. I just want to make sure it's not
misinterpreted on the tape.

Q- You said: generalists, eh, not journalists?

A- Generalists, yes. Generalists.

10 Q- Generalists. Yes.

A- And I would say ninety-nine point nine percent (99.9%)
of -- I could never say "never" -- of those people will
work in industry. It's very very difficult for an
MBA...

15 Q- M'hm.

A- ... graduate these days to work in advertising agencies.

Q- And so you have -- I saw the title a little while ago --
"Forget the PLC."

A- That's the title chosen by Dhalla and Yupseh.

20 Q- That's right. The fact is though, Doctor, you have not
forgotten the PLC.

A- No.

Q- You still teach it. Use it to teach.

A- I use it in the modern way, in the flexible way.

25 Q- The flexible way.

A- The way that says you can modify the cycle.

Q- Right. And Professor Kotler as well uses it?

A- In the same way.

Q- In the same way?

5 A- That's correct.

Q- And you and he are on the same wavelength in saying that for different products there will be a different -- a different curve?

10 A- Well, the curve is not given, okay. For different products there will generally be a take-off stage, okay.

Q- Yes.

A- And then after that, God knows what happens. It depends on the actions of competitors.

Q- Right.

15 A- You know, it depends if you can recycle it or not, if you rejuvenate or not. It depends on the strategy that you can use.

20 And, by the way, I would say that I've read most leading texts in the market and they all tend to follow the same approach that I follow in my text.

25 Q- Well, to use an expression which the other side has used from time to time, one would have to be brain dead to think that every product does exactly the same thing; wouldn't one? Different products perform in different ways after their introduction into the market?

5 A- No, no, but the notion that you seem to be missing there is the fact that the curve is not the same for every product. In other words, for each product category, what is going to happen is -- depends on the actions of companies within and also on the uncontrollable factors. Whatever happens: if there's a recession, an economic slow-down...

Q- M'hm.

A- ... other kinds of ...

10 Q- Right.

a- ...climactic decisions and so on, that may have an effect on the life cycle.

15 In other words, that curve is a result of circumstances. It's not a God given function. It's not a God given -- like it would be for a mop, you know.

Q- Right. Doctor, I think we're both saying the same thing.

A- Oh!

20 Q- We can imagine some products which will never die. For example, clothes as a product line. Hard to imagine them going out of favour, isn't it?

A- I never say never.

Q- Yes. For one thing, they protect us from the rash on the Wabasso sheets.

25 A- That's right.

Q- They'll stay -- people will keep buying clothes. I think we can expect that.

A- Well, yes.

THE COURT:

5 In Canada, anyways.

Me POTTER:

Q- Yes.

A- I don't know what's going to happen in the future.

Q- In Canada anyway. And as well...

10 THE COURT:

For the next coming thousand years.

Me POTTER:

Q- There are other products which will simply stay in favour because people just keep liking them and keep buying them; is that not correct?

15 A- Well, the companies -- one of the things that we teach our students is really to act in a flexible fashion. In other words, to look for opportunity and, you know, any analysis of a market is to say: well, look out for threats and opportunities and make decisions based on that.

20 Q- Yes.

A- Product can evolve and we thought that toothpaste would always be in a paste, in a toothpaste -- will be in a tube, but now we have those pumps. And God knows what

25

we'll have in the future.

So there are always people thinking of new ways of selling the same product or a product that will satisfy the same needs. What you are saying in your question is that needs may stay constant. They may evolve, okay. But the way we satisfy those needs may change. And it's a...

Q- But, Doctor, maybe you could just stick to my question for the time being. There are some products..

A- Yes.

Q- ...which will stay in favour for a long long time, centuries, because people just continue to like them and buy them. Isn't that correct?

A- I cannot say for sure for centuries. I mean...

Q- Well, how about cognac and champagne?

A- But again, I don't know. I mean, you know, salt we thought was a staple for a long time and now people are getting away from salt...

Q- M'hm.

A- ... because of health reasons. So I don't know. I cannot say for sure that product will always stay the same.

Q- And there are some products which will die. I mean you couldn't imagine marketing a spittoon now, could you?

THE COURT:

A what?

Me POTTER:

A spittoon.

5 Me BAKER:

Don't demonstrate, Mr. Potter.

Me POTTER:

I can't demonstrate because it is now socially
unacceptable to do so, My Lord.

10 THE COURT:

A spittoon.

Me BAKER:

A spittoon is a thing in the old days they...

Me THIBAUDEAU:

15 Un crachoir.

Me POTTER:

Un crachoir.

Me POTTER:

Q- Spittoons have gone out of favour, have they not?

20 A- Probably.

Q- Yes.

A- Maybe they still make them for movies, but...

Q- Maybe for movies, yes.

A- I don't know. There have been some very good examples
25 of products coming back in favour. I mean, look at what

they call the retro craze in Europe. I mean, going back to the twenties (20s) and so on. I mean there are products that we thought disappeared coming back in favour for sentimental reasons. The old rock records, you know, they're coming up, you know, in favour and so on. So you never know what's going to happen.

Q- Doctor, that's exactly what I'm trying to get from you, that for different products, for different product categories, depending on the way they are accepted by people, and liked, they will either last a long time in the market or they will die away; isn't that correct?

A- That is a major point that I was trying to make today is that you cannot make generalizations.

Q- Okay. That's fine.

A- Yes.

Q- But it depends on whether people continue to like them and buy them; does it not?

A- Certainly.

Q- Yes. Okay. And I think you will agree with me, Doctor, that there is a vast difference between a product which has been on the market for a long time and one which suddenly appears and suddenly catches people's fancy. The graph of sales will be very different from one product to the next, will it not?

A- Yes, because the time periods will be different and the

categories of product will be different.

Q- That's right.

A- Like I say, you cannot generalize. That's...

Q- I'm just asking you, is there not a vast difference,
5 from a marketer's point of view, from a product which
has been on the market for decades and decades and
decades and one which suddenly appears on the market.
Isn't there a vast difference?

A- Yes.

Q- Yes. And won't the strategies of the marketer be vastly
10 different, depending on whether he has that brand new
product or something which has been on the market for
generations?

A- Well, that explains the PLC concept in the sense that
15 when you have an introductory phase you have different
situations, you're facing different challenges, you
know. If you have a new product, you have a new
innovation, what you have to do is to explain to people
what an innovation is. You have to develop an
20 educational process. You have to get people to get to
like the product.

Q- And that's during that introductory phase, is it?

A- The introductory phase. And then when the product is
successful, it takes off and you have other challenges,
25 and so on. And so, you know, each market condition will

require different decisions to be made.

Q- That's right.

A- And different challenges.

Q- Okay. We agree.

5 A- Yes.

Q- So the trick is to find out, if you possibly can, what phase you're at?

A- Okay. When I show the evidence that you can't, in many cases you cannot, we can get a rough idea, okay, again it's an analogy...

10 Q- M'hm.

Q- ... we're just using that from the biological sciences, okay.

THE COURT:

15 No, but if your sales are going down for three (3) years in a row, you have a problem, obviously from a marketing point of view or management point of view. You say: listen, or I'm losing my share of the market, or I'm losing money.

20 A- Yes.

Q- I've got to do something.

A- Yes. But -- but my point...

Q- I mean that's pretty straightforward.

A- Certainly. I mean my point is that if your sales are going down, it doesn't mean that they'll continue going

25

down, unless you do something about it. That's my point.

Q- That's right. But you have to see that they're going down. You have a line.

5 A- Right.

Q- You say: my profits are diminishing or my market share is diminishing...

A- That's right.

Q- ...or my revenues are diminishing.

10 A- That's right. And then you'll get the call from the boss and say: what's happening? And then you start getting scared and running scared and so you find a way to do it.

Q- Right.

15 A- But my point is, there's no God given reason why those sales keep going down. There's no reason why. It could change, it could be either way -- it could go either way, depending on what you do. Depending on how you react to the marketplace.

20 Q- Well, usually there's a good reason why they're going down, because you're not selling enough or people are selling more products.

A- Yes.

Q- And not buying yours. That's market.

25 A- And maybe their strategy is...

Q- I mean, it doesn't sell.

A- Maybe the strategy is wrong.

Q- You've got to have buyers.

5 A- Yes, or maybe your strategy is wrong. I mean the whole
essence of case study analysis is just to look at the
market situation at a given time and decide what you
should do. Maybe you're doing something wrong, maybe
your price is too high, maybe you're having trouble
getting to a distribution channel, maybe you're having
10 strikes in some stores, maybe a chain of stores is
having a lot of strikes. Maybe it's a temporary thing
that's -- you know, due to a recession in the Maritimes.
It's difficult to know.

15 Q- But take the car business, for example, the U.S. market
has had problems with the imports and now they're trying
to develop a new style of cars which is more luxury
cars. It varies. But basically they had to do
something.

A- Yes. It doesn't mean that the market...

20 Q- But they knew that their market was going down, I mean.

A- The market share of American manufacturers is a
different thing from the total market. The total number
of cars sold in the U.S., that's a different thing.

Q- Yes, I agree.

25 A- The market -- the American manufacturers' strategies has

been wrong. It's been wrong in terms of product quality, it's been wrong in terms of pricing and so on, and fuel efficiency.

Now, there's a very good example where the energy crisis really kicked them very hard, and they took -- General Motors went into a product development phase where they developed a smaller car and Chrysler and Ford waited for them -- for General Motors to come up with that car and tried to imitate them. So then they found consumers didn't react positively. So their strategy was very wrong. They took a gamble. They waited five (5) years and they lost five (5) years.

So the market is a result of the forces that are there, and the level of sale is a result of not only reactions of individual firms but the overall uncontrollable situation, like an energy crisis, recession, those kind of things.

Me POTTER:

Q- And part of those uncontrollable variables, Doctor, are the general cultural and social environment in which we live?

A- That's another factor, certainly.

Q- And that's uncontrollable, is it not?

A- The taste -- the taste of consumers, yes.

Q- Yes. It's uncontrollable.

Now, someone trying to make a decision, what he's going to do, is it fair to say that whether this PLC is good or valid or applicable or not, he's going to try and decide, first of all, whether he's in a period of rapid growth at -- in introductory phase or whether he suddenly finds himself with declining sales.

A- Or growth maturity.

Q- He'll try and find out where he is in this cycle, won't he, first, before making a decision?

A- Well, he'll look at the general condition of sales.

Q- Yes.

A- And like I said, the empirical evidence will show that sometimes it's quite difficult even to decide what sales you are, especially toward the higher level, the growth maturity saturation and so on.

Q- Right.

A- Sometimes it's very difficult. Is it a temporary blip on my curve or is it something that is more permanent, and that's very difficult.

Q- That's very difficult.

A- If you tell me -- unless you have twenty/twenty (20/20) hindsight.

Q- Yes. Doctor, there's one place where I think you and Professor Kotler and Professor Reid all agree, that however difficult it is to find it and however flexible

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this PLC concept must be and however things change from product to product and however things might eventually change in the future, there is such a thing as a mature stage. You all three (3) of you used the word: "mature stage."

A- Yes.

Q- And it does -- it is a valid concept, a mature stage, is that not correct?

10

A- Well, it's -- we show that in empirical analysis it's difficult -- there are two (2) things. It's difficult to find out which stage you are in and that stage can be modified, you know.

Q- Doctor, don't all three (3) of you use the term: "mature stage?"

15

Me BAKER:

Let him answer the question, please, Mr. Potter.

Me POTTER:

Q- I've only asked whether you all used the term?

Me BAKER:

20

And he was explaining the answer.

A- Yes. We use the term. We use the term and...

Me POTTER:

Q- And you're going on to say that it is sometimes difficult to find out whether you're actually in it or not?

25

A- Yes.

Q- Right.

A- That's the research.

Q- But it is there. It is there, it's out there somewhere?

5 A- Well, it's a simplistic -- it's a simple description of the market. It's a crutches, you know, crutches to help you walk if you have trouble walking. You know, it's used as a pedagogical tool.

10 You would not want to invest a great amount of money on that concept is basically what I mean, okay.

A mature stage you can -- you can define a mature stage in the sense by saying that you have reached a level of mass market. In other words, you have -- you're selling to a mass audience, okay, basically.

15 That's a rough definition of maturity in the sense.

Q- And is that the way you use the term, Doctor, when you use it?

A- Yes, I use it to mean a growth that is declining, decreasing marginally -- increasing at decreasing marginal term. That's the way I used it to differentiate from saturation.

20

Q- To differentiate from saturation.

A- Yes. Keeping in mind that it can be modified.

Q- I understand. But you use the term: maturity...

25 A- Yes.

Q- ...of the market...

A- Yes.

Q- ...to identify a phase...

A- Yes.

5 Q- ...which comes after saturation?

A- Comes after growth.

Q- After growth.

A- Which is rapid growth.

Q- After the rapid growth?

10 A- Yes.

Q- And after the point of saturation?

A- No, before.

Q- Before the saturation.

15 A- That's the -- that's the term -- that's the way I use the term.

Q- Okay. So tell me again what your mature market is?

20 A- Okay. The way we define mature market in that text, and we did it from the very beginning, is the point in which you would reach a mass market, okay. Otherwise, you have reached a large number of consumers. You're not -- you're not getting adoption -- rapid adoption. You're getting -- you have saturated your distribution channels, okay, but you have not sold to the total market yet, okay.

25 With a given product and -- and -- but within that

concept, you can still find ways you can change your product to increase and go back to another group, you know, like the cereal example. In other words, you may have reached a temporary stage but you can still
5 relaunch the product and you can still relaunch it again. I mean, maybe next year the cereal manufacturers will come out with another rice -- whatever.

Q- Well, if we look at the cereal, your Exhibit AG-30.

A- Yes.

10 Q- I think what you said and your testimony was that something happened starting in nineteen seventy-six (1976)?

A- Actually, nineteen seventy-one (1971) I would say.

Q- In nineteen seventy-one (1971), you would say?

15 A- First -- first, in nineteen seventy-one (1971), if I remember correctly, there were a number of health food crazes, you know, people eating wheat germs and all kinds of things like that. So that was back to nutritious kind of cereal, and that lasted for a while,
20 and then they started introducing bran fibers and cholesterol and all those health scares, and that really made the market take off -- and it is just taking off and it's still going on now very very strongly.

Q- So that increase in the graph at the...

25 A- Yes.

Q- ...at the other end...

A- Yes.

Q- ... at the right-hand of your graph, you attribute to a general increase in health concerns in the market?

5 A- It's -- it's the way the manufacturers have used the health concerns to make improvements to their product by adding a feature to their products.

Q- Right.

A- It's what's called a product modification strategy...

10 Q- Do I take it from that, Doctor...

A- ...which is a feature improvement.

Q- ...excuse me, do I take it from that that the manufacturers saw the health concerns and reacted to them?

15 A- I don't know which came first.

Q- Well, Doctor, do you think...

A- I can't tell which came first.

Q- Do you think that cereal manufacturers created the health concerns?

20 A- Not necessarily.

Q- No.

A- Not necessarily. They're constantly looking for opportunity and they explore the opportunity. Don't forget, a marketer doesn't work in a vacuum. Marketing, you know, looks at the situation of the market at

25

certain times and makes decisions to the benefit of the firm; and that's basically what marketing is all about and, you know, it's a résonnance, caisse de résonnance -- I don't know how you say it in English -- you know, basically picks up what's there and amplifies it.

Q- It's an echo chamber.

A- Amplifies it, yes, because...

Q- An echo chamber.

A- Yes, and advertising is also an echo chamber. So you don't work in a vacuum, you work on what you have and you try to -- to ride trends if you see them, and if you can create them it's even better.

Q- And when you -- when you react to trends -- either seeing a market demand or a consumer need and offering that product, will your decisions regarding advertising not be different depending on whether you feel yourself to be at the introductory phase...

A- M'hm.

Q- ...of rapid growth or in a much later phase? Won't those decisions be different?

A- M'hm. Well, at the beginning, of course, because at the beginning, what you have is that you have -- you have to inform consumers about the product and try to convince them to -- to use your brand. Toward the --toward the end of the growth you still have to inform consumers and

you have to go after the people who have not used your products yet, the laggards and some of the late majority groups, people who are -- have not used the product and then you have a market that has high awareness. It doesn't mean everybody knows about the product brands and then, you know, you're advertising a challenge, the challenge that your advertising has to face is going to be different, of course, and that's what we're trying to do with the PLC. We're trying to teach students that different stages may require different strategic decisions.

Q- Different strategies. And, in fact, probably a different content in your advertising, wouldn't you agree?

A- Different content -- what do you mean by content?

Q- Well, aren't you trying to give different information to different people depending on whether you're at the very beginning of your graph which you use in your report or at the very end?

A- Yes, okay. Now, let me explain that. What happens is that people go through decision stages. Consumers go through decision stages. Nobody is going to say look, you know, say, going to make a decision on the spot. They have to be told, they have to be aware of the brand. They have to be told what the product is all

about. They have to like it. They have to like your brand better than the others. They have to be convinced enough they need the product to go and buy it and they buy it. So they go through those stages. So different people are at different stages in their own decision process. All right?

So what you do at -- and that's one (1) of the major points I stress in my advertising course, is what you have to do is that you have to identify at which stages the bulk of your market is and then keep moving it up, keep moving it up.

You know, advertising will influence the decision process of consumers. Of course, you cannot talk to every consumer individually, you talk to them in groups. And basically what your advertising has got to do is to move them to make a decision. And the more you -- successful you are, the more you will move them to make a decision to favour of your brand.

Q- Doctor, that continuum that you -- you mentioned, you refer to it in your report, I can't place my -- my finger on the page but there is a -- at page twenty-one (21).

A- M'hm.

Q- We're better off on page twenty (20), and you say very clearly, at the bottom of page twenty (20) that:

"The consumer must go through every one of those stages ..."

A- That's right.

Q- "... before getting to the bottom one of actually buying your brand."

A- M'hm. That's correct. But they're not all at the same -- they don't go in unison. You know, it's not like the army, you know, everybody is in the same step, okay.

Q- Yes.

A- Everyone is at different levels.

Q- Right.

A- And that's what your challenge is, is to find out where they are at their -- identify them and move them up.

Q- Okay, now you have a list here of six (6) stages...

A- Yes.

Q- Beginning with...

A- Awareness.

Q- Awareness of the brand?

A- Yes.

Q- Now, before we get there, doesn't the consumer have to be brought to -- through several stages about awareness of the product and awareness of the attributes of the product ...

A- M'hm.

Q- ...and a taste for the product?

A- M'hm.

Q- And a preference for the product and a conviction ...

A- M'hm.

Q- ...to buy the product?

5 A- Sure.

Q- Even before he starts thinking of brands.

A- Well, those two (2) things go in parallel. In other words, you learn about the product often by looking at the brands.

10 Q- Yes, okay. But you agree with me that...

A- Yes, you have to be hungry before you can buy it. Same thing.

Q- There's a product continuum and there is a brand continuum?

15 A- Yes.

Q- Yes.

A- They're not -- they don't tailgate to each other, they will overlap. In other words, as you're looking -- as you're searching for the brand of products you want to buy, you are learning about the car category as you go along.

20

Q- Right, but someone who is not on the purchase point on the product's continuum, is never going to get to the purchase point on the brand continuum, is he?

25 A- If he doesn't want to purchase the product, if he has

decided not to purchase the product...

Q- Yes.

A- Oh yes, if he has decided not to purchase the product,
he'll never purchase the brand.

5 Q- No.

A- I mean you don't purchase product, you purchase brands.

Q- Okay.

A- I mean...

Q- Now, that being -- that being said...

10 THE COURT:

What, you don't purchase products, you purchase brands?

A- You purchase brands. I mean, you don't purchase a
product -- I don't buy toothpaste, I buy Crest
toothpaste.

15 Me POTTER:

Q- Does that go for bananas?

A- Chiquita.

Q- Yes.

A- Chiquita bananas.

20 Q- Peas?

A- Peas -- frozen peas, you mean?

Q- Yes.

A- I may buy Steinberg versus another manufacturer.

THE COURT:

25 Could you tell me a couple of manufacturers for peas?

A- For peas? You have Steinberg and you have General Foods
and you have...

Q- What brand?

A- Oh, boy...

5 Q- See, you're buying peas?

Me POTTER:

Q- It sounds like you buy peas?

A- My wife does. My wife does but I eat them.

Me BAKER:

10 He didn't say he ate peas, My Lord.

THE COURT:

Pardon?

Me BAKER:

He didn't say that he bought peas or that he ate them.

15 Me POTTER:

Q- Okay, now, Doctor....

THE COURT:

I buy Le Sieur.

A- Le Sieur, oh, yes, the good one.

20 Q- It's still their peas.

A- That's in canned, I was thinking of frozen though.

Those are canned peas, yes.

Me POTTER:

Q- Now, we've got these two (2) continuum, the product
25 continuum in -- the continuum and the brand continuum?

A- Yes.

Q- Don't you agree that we're looking at the mass market out there, is at a different point generally along that continuum depending on whether you're at the beginning of your PLC graph or at the end?

A- Okay, it's a matter of degree -- and I'm glad you brought that point, because it's really a matter of degree. You know, if you're thinking in terms of product continuum and I'm glad you're saying that because I've heard, you know, I've heard it referred in the Manichean fashion, you know, either you're there or you're not there. To me, that's very Manichean.

You know, you have different stages in your decision process to buy a product, okay. So, at the beginning, when you just first learn about the product and then along the way, you -- you learn more about the product, you get to like the product and then you get -- down the road you get to buy the product.

So every consumer is at different stages in their decision purchase to adopt or not adopt a product and that's very important to -- to realize. Now, what you have is -- looking at the distribution in the marketplace -- now, when the product is very new, there are very few people who know about the product, okay, and down the road, then you have a change happening. So

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more people know about the product, and more people go down the hierarchy with -- what you call the product hierarchy, okay, more and more people will go. And that's why I tell my students you have to find out what's happening there, how many people are there at different stages and then -- so they can decide what to target and how to target them in their advertising. And that's a very important point to make, okay, because you don't have users and non-users. You have users -- you have different use -- you have different degrees of use, in other words. I don't know if you follow me?

10

Q- I follow you...

15

A- You have people who are determined not to use a product. You have people who may be convinced to use a product and you have people who would want to use a product but really, it's the continuum. The continuum of determination to buy or not to buy a product.

20

Q- My Lord, we're at a point in time now where I -- I'm thinking of food, whatever the brand.

THE COURT:

So we'll satisfy you're needs.

A- Good marketing principle.

LUNCH ADJOURNMENT

25

In the year of Our Lord nineteen hundred and ninety (1990),
on this fourth (4th) day of the month of April, PERSONALLY
CAME AND APPEARED:

5 Me IRVING:

Pour la requérante, RJR-Macdonald, Colin Irving et
Georges Thibaudeau.

Me POTTER:

Pour Imperial, Simon Potter.

10 Me BAKER:

Pour le Procureur général, Roger Baker, Claude Joyal et
Lise Tremblay.

Just before my friend continues, My Lord, I from
time to time, as you know, have got to file expert's
15 reports. It's the end of the testimony, so could we
give a number to Dr. Laroche's report?

THE CLERK:

AG-232.

THE COURT:

20 Now we'll know, Mr. Potter, on what you're
cross-examining on.

Me POTTER:

Yes.

25

In the year of Our Lord nineteen hundred and ninety (1990),
on this fourth (4th) day of the month of April, PERSONALLY
CAME AND APPEARED:

5 MICHEL LAROCHE,

WHO, being under the same oath, doth depose and say as
follows:

10 CROSS-EXAMINATION BY ME SIMON V. POTTER,

On behalf of Petitioner, Imperial Tobacco Limited:

Q- Dr. Laroche, when we broke off we were talking about the
fact that there are some products which are introduced
new onto a market, there are other products which have
15 been around for a long time.

A- Yes.

Q- I think we agreed that the marketing and advertising
strategies would be different, depending on what product
we're talking about.

20 A- Yes.

Q- And I think we agreed that there are some products,
generally the ones that are introduced brand new, for
which there is a low level of awareness in the market?

A- Yes, if it's a new innovation, yes.

25 Q- And there are other products which, having been around

for a long time and been used for a long time, generally have a high level of awareness in the market?

13/0072

A- Yes.

Q- Generally.

5

A- Yes, but the product or product awareness.

Q- Yes.

A- Awareness of the product itself.

Q- Yes. In fact, I think we can say there are some products for which there is near universal awareness?

10

A- Some products are very well-known.

Q- Yes.

A- Yes.

Q- In fact, could you name some?

A- Well, a chair, a pencil, clothing.

15

Q- The peas we were talking about before lunch?

A- Peas, certainly.

Q- Yes.

A- Certainly. They're well-known.

Q- They're well-known, there is near uni...

20

A- It doesn't mean that they're well bought, but they're well-known.

Q- Near universal awareness of the product.

A- Yes, that's correct.

Q- There are such products.

25

A- Oh yes.

Q- And you...

A- Most products in normal use tend to be relatively well-known.

5 Q- Yes. And do you agree with me that the marketing and advertising strategy will be different, depending whether you have a product for which awareness is universal or you have a product for which awareness is very limited?

10 A- The major difference is in terms of the emphasis in terms of your communication. If it's a new product, the communication is to teach consumers about the nature of the innovation. If the product is well-known, it's to teach consumers to buy a certain form or a certain brand, to convince them to buy a certain form or certain brand.

15 Q- M'hm. It's not to convince them to buy the product itself but to convince them to buy a particular brand?

A- Well, that's -- you don't sell products, you sell brands, but you're basically part of a product category.

20 And the manufacturer always has a brand and then tries the product that that manufacturer manufactures.

Q- Okay.

A- That firm manufactures.

25 Q- Now, if we go to page sixteen (16) and seventeen (17) of your report, Doctor -- and I don't want to waste time

with you quibbling about what you've already said --
let's agree that for different products the graph might
look a little bit different.

A- Yes.

5 Q- For a particular product it might be difficult to tell
exactly where you are.

A- That's right.

Q- And for any product, as you say, nobody can tell the
future.

10 A- That's correct.

Q- You don't know if it's suddenly going to shoot up...

A- That's correct.

Q- ... in ten (10) years.

A- That's the point.

15 Q- But nevertheless, here you've used, on page fifteen
(16), a product life cycle as a general proposition,
isn't that right?

A- Yes.

Q- Yes.

20 A- And at one point, at one point in time, you know what's
happened in the past but you don't know what happens in
the future.

Q- Right.

A- And the past is the result of past actions, okay. In
25 other words, that curve is not a given curve.

Q- Yes.

A- It's the result of the conditions that took place in the period, from the inception to the point that we're looking at.

5 Q- You've said that too, and what you mean by that, I take it, is that everything that happens in the market is the result of one factor or another, either a controllable factor or an uncontrollable factor?

A- That's right.

10 Q- Right.

A- It's a set of circumstances, that's correct.

Q- Yes, okay. And if we go to page seventeen (17), what I take it that you're saying here, Doctor, is that as we move along your product life cycle...

15 A- M'hm.

Q- ... from the beginning of it towards the end, and without knowing the future, as you say, various decisions that you make ...

A- M'hm.

20 Q- ...are changed, the strategy changes as you move along the cycle? Is that right?

A- That's what we use for pedagogical purposes, to test the kinds of decisions that they have to make at different phases, assuming that we know what phase we're in.

25 Q- Right. Okay. And I see that if you're in, for example,

let's pick maturity.

A- M'hm.

Q- That the strategy that you pick for advertising is,
first of all, brand loyalty.

5 A- That's correct.

Q- Yes.

A- That's the primary task, is to form a brand loyalty.

Q- Right.

A- Yes.

10 Q- And as you move along the product life cycle and move
into what you call saturation...

A- Yes.

Q- ... that task becomes one of differentiating among the
various brands which are out there in the market?

15 A- Yes, that's the main task, okay. It doesn't mean that's
all you're doing. That's the main task.

Q- That's the main task, I understand.

A- Because that's the bulk of your market, but you always
have new users coming into the market, and for those new
20 users they start anew.

Q- Okay, now...

A- So you're talking about the current users.

Q- All right. Now, I'd like to come back and look, then,
at your graph where we're looking at maturity and
25 saturation.

A- Yes.

Q- And I'd like you to name me some products which fit, which you can tell quite easily fit into either the maturity stage or the saturation phase.

5 A- I think I made it abundantly clear this morning that you can never tell. You can tell as a temporary situation, but that's all you can tell. I gave the example of the cereal market, which I think is a telling example.

Q- The which market?

10 A- The cereal market this morning, and in the Canadian market, you know, during a certain time period, it could have said that it was saturation, but as we know, that was the wrong decisions to be made in hindsight. And so that's why I'm saying that the stages are not in any particular given order in order, you know, that the hierarchy can be reversed. In other words, you can reach a temporary plateau and then go again, reach another plateau and go again or decline and go again.

15

I mean we've seen some examples from the empirical analysis that you can have a number of different shapes of curves that take place at any given time.

20

Q- That's right. And the number of different shapes and curves, that was illustrated by Rink & Swan, wasn't it?

A- That's right. They compiled them based on the literature.

25

Q- Do you have that article in front of you?

A- Yes.

Q- I'd like you to turn to page four ninety-six (496),
okay.

5 A- M'hm.

Q- And these are the people who said: my goodness! when we
look at it empirically, there's at least a dozen
different types of curves.

A- Yes.

10 Q- The demand curve can go down, it can zoom up.

A- That's right.

Q- It can go down very slowly. It can go up and stay up.

A- Based on the empirical evidence, that's correct.

15 Q- But what they say at page four ninety-six (496) in the
bottom of the paragraph PLC curves is that the weight of
evidence suggests that the most common curve is the
classical. Do you see that, Doctor?

A- Where is that? The first sentence?

Q- The second to last sentence of that paragraph.

20 A- "The weight of the evidence suggests that the
most common curve is the classical, but it is
not the only PLC."

Q- Right. So...

25 A- But what good is it to have a dozen possibilities if you
don't know which possibility is going to happen to you.

As a marketer, you know, you're looking in the future and all you know is that there are twelve (12) possible things that can happen to you.

Q- Doctor, we're all going to agree that nobody can predict the future.

A- That's right.

Q- This is not news to anyone here.

A- That's right.

Q- All I'm asking you is do you agree with them that you do find the classical curve -- you sometimes do find a classical curve?

A- Yes, of course, you do that sometimes, yes.

Q- Yes.

A- And they set some examples and did. ..

Q- Now -- and that being said, let's place ourselves today, because we can't predict tomorrow. Today...

A- Well, we have to, because we're living in the future.

Q- We're living in the future, are we? I see.

Can you name me a product which today would be accepted by Rink & Swan, who speak of maturity, by you who speaks of maturity, by Kotler who speaks of maturity, by Reid who speaks of maturity. There must be a product which today everyone would agree is in its mature phase?

A- Mature phase meaning increased growth, total growth

sales, right?

Q- Well, let's deal with you...

A- That's my definition, yes.

Q- Name me one product that fits into your graph.

5 A- Well, we're probably going into that phase, but again,
I, you know, I cannot say for sure that's what will
happen in the future, but until now, until today, we
probably have -- we've reached maturity, which is
increasing growth sales at the decreasing rate, for a
10 product like VCRs or -- I think that's a product that
has been introduced a few years ago that's still being
sold and is still being penetrated into the marketplace.
So it's in the growth phase.

Q- Well, it's in the growth phase.

15 A- But maturity phase is still growth, it's still growing.
It's growing at a decreasing rate, but it's still
growing. Maturity...

Q- So VCRs, introduced quite recently, you would put either
at the end of growth or the beginning of the maturity
20 phase, is that right?

A- Probably. I haven't seen the figures that tend to
demonstrate, but that would be my guess.

Q- Well, let's get a product you would be quite happy to
put in the mature phase.

25 A- Well, I think coffee that we saw the example, we give

coffee, where there's still some growing taking place in the long run, but again, we saw some, you know, different variability in the coffee, but the overall trend is still going up.

5 Q- Okay.

A- So it will be -- it will be in the maturity, the growth maturity stage.

10 Q- Doctor, I don't want to appear rude, but I do admit to some surprise. As you say, you've been teaching this to graduate and undergraduate students for sixteen (16) years, you've been using this graph all that time, you're teaching it to them, it's in your book. You must have in your mind some products which fit in the mature stage.

15 A- Well, like I said, at a given stage you can, you know, you can give a number of examples of product that up to a certain point in time have started to have a decreasing marginal return. I gave you an example of the VCRs.

20 THE COURT:

The question is today.

A- If you use the example of VCR, I can give you an example of dishwashers, I can give you -- let's see, but again, you always -- when you always give those examples, you
25 give that in a proviso that the product can be

relaunched and if...

Me POTTER:

Q- Yes, well, that's the future, Doctor.

A- Yes.

5 Q- Today, how about chocolate bars, where do they fit on there?

A- Chocolate bars, as a volume for the whole industry?

Q- Doctor, just tell me, are we in a mature chocolate market or not?

10 A- Probably. I would put it in the mature.

Q- In the mature, okay.

A- Yes. Mature, toward the end of the maturity.

Q- End of maturity. Approaching saturation?

A- Possibly.

15 Q- And why do you say that?

A- Just, it's just a guess based on the -- but again, you know, you...

Q- Doctor, why do you...

20 A- What you're asking me -- what you're asking me is to make a wild guess.

Q- Well, I'm asking why it is you would guess that chocolate bars are towards saturation. Is it because their sales are starting to decline?

25 A- I don't know if it's for certain that they are, I didn't study...

Q- You didn't.

A- ...the chocolate bar market.

Q- If they are starting to decline would you put them into saturation?

5 A- Saturation meaning flat.

Q- Well, yes, flat, starting to go down.

A- But again, like I say, you can give an example for pedagogical purposes, but it doesn't mean that that's the situation that the product is really in unless you can do an in-depth analysis. And, you know, I hesitate to...

10

Q- Doctor...

A- Yes.

Q- ...you've been at this for sixteen (16) years.

15 A- Yes.

Q- Please tell me one product you are sure is in the mature phase?

A- I'm not sure of anything...

Q- Nothing.

20 A- ...about those products because of the evidence in terms of the PLC research. We're not sure of anything anymore.

Q- But you used...

A- Because of PLC research is good -- it's a good concept, it's an idea, it's an idealization. It's an analogy,

25

it's a pedagogical tool. I cannot emphasize enough that it is a pedagogical tool. It is a -- it is a tool to be used -- to be used as a reference point to help students understand that marketing conditions do vary, but now you're asking to make -- to make an assessment of a particular product...

Q- No, I'm not, Doctor, I'm asking you to pick any product -- I'm not putting a product to you, I'm asking you...

A- I know.

Q- ...you pick one.

A- But you're asking me to make an assessment...

Q- You pick one that's mature -- that's in a mature phase.

A- But again I don't accept that any product I would choose will show this S-curve.

Q- Does any product in the world show that curve?

A- I don't know. I have showed you...

Q- You've just agreed...

A- I've showed you the evidence and I don't remember what the evidence referred to in terms of the classical, but you have the references, you can go back to them: Cox...

Q- Doctor -- Doctor...

A- ...Buzzell...

Q- ...I'm not looking for where all these different curves come from. You've agreed with me that there are different curves.

A- Yes.

Q- You've agreed with Rink & Swan that there are products,
in fact they say most products, you've agreed that there
are products...

5 A- I don't know...

Q- ... which show the classical curve?

A- I don't know how many. Yes, some -- some ...

Q- Some do. Well, name me one?

A- Well, I remember reading the article by Buzzell. You
10 have the article by Buzzell.

Q- Yes.

A- And if you remember, that article was written in
nineteen sixty-six (1966) and I will show you the peril
of doing what you're trying to do, and that's the
15 problem of that. And when you look at the article by
Buzzell, they give you -- he gives you the curves for
instant coffee. Can you see that? Can you see the
three (3) points on your copy? On page...

Q- Yes, we've seen the curve, for instance.

20 A- Okay, let me show you something.

Q- And it goes in unpredictable ways later on, that's true.
I'm just asking you...

A- Well, let me -- let me read a comment that he makes:

"All three (3) of these product categories..."

25 That's on page fifty-seven (57), if you'll please bear

with me.

"All three (3) of these product categories appear to conform to the basic life cycle model of sales growth. In each case, there was an introductory period of slow growth, lasting from 4 years in the case of frozen juice concentrate and as many as 10 years in the case of powdered coffee creamers. Then each product entered a period of rapid growth which lasted from 4 to 7 years for juice concentrate and coffee and which is not yet completed for coffee creamers. Both instant coffee and juice concentrate then finally reached a stage of maturity characterized by stable sales per capita."

That was written in nineteen sixty-six (1966)...

THE COURT:

Okay, now that you've give us the opinion of other, would you give us your opinion, either you know or you don't know?

A- Yes, I know what happened because when I wrote my book, I got from Nielsen, in Nielsen -- from General Foods actually, the Nielsen data from nineteen sixty-five (1965) to nineteen eighty-three (1983) and it's in my textbook and it shows that there is a recycle. In other

words, instead of staying stable like Buzzell predicted at that time, it actually went up again because of freeze-dried and decaffeinated coffee being introduced.

5 Q- Do you see the last sentence in that paragraph you've just read?

A- On page?

Q- Page fifty-seven (57), the paragraph you just read?

10 "Both instant coffee and juice concentrate finally reached a stage of maturity characterized by stable sales per capita."

A- Okay, but that's -- that's a traditional -- traditional definition.

Q- Traditional...

15 A- That's the original one that I just showed was so flawed.

Q- Yes.

A- And was -- it was modified.

20 Q- Okay. Well, listen, I'm going to say it one (1) more time and then we'll leave it, but you define maturity the way you want, either the traditional way or your new way or the way you do it through your students, give me one (1) product which you know is, today, irrespective of what happens next year, in the mature stage?

A- I told you VCRs, dishwashers.

25 Q- Yes. Dishwashers and VCRs, okay, and give me one (1)

product which...

A- But again, I don't have the data.

Q- ...fits into saturation?

A- I don't have the data.

5 Q- Do you know one (1) product that fits into saturation?

A- Well, breakfast cereals between the period of nineteen
sixty -- sixty (1960) to seventy-one ('71).

10 Q- M'hm. Okay. Now, it seems like it's difficult for you
to speak about particular products. Let's -- let's --
let's speak in terms of a hypothesis. Let's say we have
a product -- any product, and I'm going to give you some
facts.

A- M'hm.

Q- It's a product that's been around for a long time.

15 A- M'hm.

Q- It's a product about which many people are already aware
...

A- Aware.

20 Q- ...and it's a product about which most people are aware
from quite a young age. It's a product for which sales
per capita have been going down regularly for many
years. It's a product for the sales of which, in global
terms, have been going down for many years...

A- M'hm. Yes.

25 Q- ... and it's a product for which there are fewer

manufacturers now than there used to be.

A- M'hm.

Q- Can you tell me where that goes on...

A- Are they globalistic?

5 Q- Pardon me?

A- Are they globalistic market?

Q- All right, that too. Now, you tell me where that goes
on your graph?

10 A- I will refer to page eighteen (18). It could be
somewhere along the saturation phase with a possibility
of product or market development.

Q- Okay. So you...

A- That's why you have to stay flexible.

Q- I understand. Let's do that.

15 A- Yes. Yes.

Q- So you would put it in saturation. So I'm at your graph
on page sixteen (16).

A- M'hm.

20 Q- So, but a possibility, you say, that is to say, you put
it beyond maturity. We're beyond maturity into
saturation, but there's a possibility, you say, of
market or product development?

A- That's right.

25 Q- Right. And product development, you mean a product
innovation?

A- Product development is a modification of the product to be sold to the current users like, you know, fibre added...

Q- Right.

5 A- ... to oat -- added to cereal.

Q- Right. Okay.

A- But any market is not static in the sense that a market, even if I can accept your market that is declining, a market is never static. There are new users coming into the market all the time, okay.

10 Q- M'hm.

A- There's population growth. You know there are people, I believe a large number of people being born every year. In Canada we have a large number of immigrants coming in. There are always new people coming into the market. The market is never static in that sense. There's always some dynamics going in.

15 Q- Yes.

A- And there's some people coming in. There's people staying in and there's people quitting the market. So in a sense we have -- we're looking at a parade of people down there, and that's why the market is a dynamic market, not a static view of the world.

20 Q- Doctor, of course, that's true for any product. Isn't
25 -- every product has a market which is dynamic in that

sense that you just mentioned?

A- Most markets -- all markets are dynamic, of course.

Q- All markets.

A- There are always new users. There are always new users.

5 Q- There are always people coming in and always people going out.

A- Well.

Q- And that's true at whatever point you are on this graph, is that not so?

10 A- Yes. There are a hundred thousand (100,000) people born every day.

Q- That's right.

A- In Canada.

Q- Okay. My Lord, we've just used the article, the Rink &
15 Swan article, and since it speaks about these various kinds of mature markets, and about the prevalence of the classical graph and since the doctor has relied on it, I'd like that produced as an Exhibit.

THE GREFFIER:

20 ITL-41.

Me POTTER:

Q- Now, Doctor, you've got -- that graph is a -- the graph
in front of you, whether it's page sixteen (16) or the
more complicated one on page eighteen (18), that graph
25 is for the product life cycle.

A- Yes.

Q- There's such a thing as the brand life cycle too, is there not?

5 A- Yes, although the validity of the brand life cycles have been demonstrated to be beyond repair.

Q- Beyond repair.

A- Yes.

Q- It's even less easy to make a prediction about a brand than it is about the product, isn't that correct?

10 A- That's correct. They found them very unstable.

Q- Yes. In fact, that's what Dhalla and Yupseh say in the article which your lawyer...

15 A- Yes. You see, as you move away from product to form to brand, you find less and less validity of the product life cycle.

Q- Right.

A- That's why I never teach the brand life cycle concept.

Q- Okay.

A- Never.

20 Q- And I take it that from that, Doctor, what you mean is you may have a product life cycle which has reached maturity, saturation and even decline, but a particular brand might be doing all right and do very well or shoot up and down quite unpredictably.

25 A- That's possible. Sure.

Q- Yes.

A- And I think in Kotler's book you have some examples of toothpaste brands.

5 Q- That's right. Okay. So on that point you would agree with Dhalla and Yupseh that there is no life cycle for brands?

A- Yes.

Q- Yes. Could you get their..

A- Well, there is, but it's unstable. I'm sorry.

10 Q- It's unstable...

A- I mean there is in the sense that you can map the sales over time.

Q- Yes.

15 A- Okay. So in that sense if you want to call that a life cycle, but the shape of it is completely -- it's completely unpredictable. It depends, of course, on the marketing aspect.

Q- And it doesn't help you in making decisions?

A- For brands?

20 Q- Yes.

A- Not the life cycle concept.

Q- Yes.

A- Yes. The evolution of brand, of course.

25 Q- Okay. Well, in that you agree perfectly with Dhalla and Yupseh. Could you get their article and we'll just see

if you agree with something else.

A- Sure.

Q- I'd like you to look at page one sixteen (116).

A- Yes.

5 Q- And in the second paragraph, they're talking about the life cycle trends of certain brands and they say in the second sentence:

"The evidence..."

A- Is discouraging.

10 Q- Are you with me? "The evidence..."?

A- The evidence is discouraging.

Q- "... for the P.L.C. concept is discouraging.

With the exception of non-filter cigarettes,
the brands tend to have different sales
15 patterns and the product form curves throw no
light on what the sales would be in the
future."

A- That's right.

Q- That's exactly what you were saying a second ago, isn't
20 it, Doctor?

A- Yes.

Q- It doesn't help you in making decisions or predicting
the future?

A- No. For brands.

25 Q- For brands.

A- Yes.

Q- They go on to say...

A- Even less for brands than for products.

16/0029

Q- Right. They go on to say, Doctor:

5

"All that can be said is that if a product
form ..."

-- they give an example --

10

"... is truly in a final declining state, it
is very difficult for a brand to reverse the
trend."

Do you agree with that?

A- I don't know what they mean by "truly declining state".
You can look at it a posteriori but I don't know what
they mean, "truly".

15

Q- Doctor, do you agree...

A- I don't know. There's nothing true, in the sense that
you don't know what's happening in the future. How can
you say it's truly in a declining state? Now, if you
look back...

20

Q- Doctor...

A- ... if you look back, if you have the information and if
you look back, and then if you can go all the way
through the whole -- the whole life cycle of the -- you
know, all the way to the demise of the product, then
25 you've looked at the whole life and even then you can

resuscitate some product.

Q- Maybe you can, Doctor.

A- Oh, yes.

Q- I'm just asking you, you're an expert...

5 A- Your...

Q- ... in this field, in advertising.

A- Yes.

Q- Advertising management...

A- Yes.

10 Q- ... which presumably is management decisions about
advertising.

A- M'hm. M'hm.

Q- Do you agree with them that once you have a product form
the sales trend of which is declining ...

15 A- M'hm.

Q- ... that it's very difficult to use a brand...

A- Yes.

Q- ... and a brand strategy...

A- Yes.

20 Q- ... to effect the trend of the product sales line? Do
you agree with them or not?

A- That is very difficult for a brand, without doing
anything else to the product itself...

Q- Yes.

25 A- ... if you're just looking at the brand, to reverse the

trend. I'm not so sure I agree with that. I'm not so sure. Intuitively, it looks all right, but I'm not so sure.

Q- But what do we take from it, Doctor? That it makes sense at first glance but you think it might be wrong or what?

A- Well, like a lot of statements, they're intuitively appealing but they don't make sense after you've read it three (3) times. I can accept that it's very difficult but I don't think it's impossible.

Q- I see. So you agree with them that it's very difficult, but you might imagine that it could happen?

A- Could happen.

Q- Yes.

A- Depends how much you spend, you know. If money is no object, there are a number of things you can do.

Q- Okay.

A- And especially if you're spending a hundred (100) million dollars in advertising.

Q- Are you telling me that by throwing money at advertising you can effect...

A- It's possible.

Q- ... the overall demand curve?

A- Oh, certainly.

Q- Yes? Okay, well we'll get to that in a minute. Could

we produ... before we do that, let's go to page one thirteen (113). Now, admittedly this is a table, Doctor, of the PLC advocates...

A- The original.

5 Q- ... view.

A- Yes, the original.

Q- Right. This is not the authors', Dhalla and Yupseh's view, because, of course, they say "Forget it". They say "Forget the PLC..."

10 A- Yes, what they compiled is according to their understanding of the original concept. They compiled it.

Q- Right.

A- They compiled it. There's no reference in there, so
15 it's there waiting.

Q- Okay. And I just want to find out what your opinion is, Doctor, because I only have you on the stand, I don't have them.

A- M'hm.

20 Q- But I'm looking at maturity stage...

A- Yes.

Q- ... and advertising strategy on this table.

A- M'hm.

Q- And I can see that the PLC advocates say that when you
25 have a product which is at maturity stage, you use your

advertising strategy to -- as a vehicle for
differentiation among otherwise similar brands.

A- Yes.

Q- Do you agree with that?

5 A- Yes, because what happens at this stage is that,
according to that view again, all the products are
similar. Everybody has copied everybody else and what
you have is that a product -- sets of brands that, if
you have been applying them and a number of tests have
10 been done for a number of product categories, if you
have a product there fairly similar and you take out the
brand name and you have people try to identify which
brand it is, they cannot do it. Now, it's done for beer
and other product categories.

15 Then, as soon as you start putting the brand label
on the bottle, then immediately people start to show
strong preferences, which indicates that it's
advertising which has created the image, not necessarily
the inherent value of the product itself. So it's
20 advertising that has to differentiate -- differentiate
the brand because, at that stage, the differentiation
doesn't exist unless you start, you know, doing some
product modification strategy, in which case then you
start going up in a new form of differentiation which is
25 product differentiation.

Q- So that would be product innovation, to use your term from this morning?

A- Well, product development strategy.

Q- Yes, okay.

5 A- Yes.

Q- And in fact, in your report you give the example of the Pepsi and Coke blind taste test and so on.

A- Yes. Yes, Pepsi and what happened to -- yes.

10 Q- Right. And what you're saying, I think, is that advertising gives an image to Pepsi and advertising gives an image to Coke?

A- That's correct.

Q- And that people make their choice among those -- between those two (2) products...

15 A- Based on image.

Q- ... based on the preference that they give -- that they develop, based on the image?

A- That's correct.

Q- That's correct.

20 A- That's correct. Not only on the inherent value of the product.

25 Q- Right. And, Doctor, can you tell us, is that preference an irrational preference or is the consumer making a rational choice? Is it a valid choice or an invalid choice? Is it right or is it wrong?

A- No, it's a two-way process, in the sense that you have manufacturers who are researching what the consumers like, okay, and then they're reflecting that in their advertising.

5 Q- Yes.

A- That's why I'm saying that the "caisse de résonnance", in the sense of echo chamber, as you said, is -- you're using as a handle what consumers tell you about what they like and dislike and ...

10 Q- Right.

A- ... and then you advertise them in different manners.

Q- Yes, and using that as an example, Doctor, is it fair to say that the manufacturer, the advertiser...

A- Yes.

15 Q- ... is trying to respond to the needs or desires or wants of that consumer, whatever they happen to be? Is that correct?

A- Well, they're using the knowledge of the consumer to try to develop an image that would appeal to the consumer.
20 In other words, the consumer, looking at an ad, will like and respond positively to a particular brand...

Q- Yes.

A- ... better than another brand.

Q- Okay.

25 A- Sometimes you're successful, sometimes you're not.

Q- Yes. Doctor, I want to put my question again because I'm not sure that you've answered it...

A- Yes.

Q- ... although you nodded your head earlier. Is it so
5 that the manufacturer, the advertiser...

A- Yes.

Q- ... is trying to respond to the needs, the wants, the desires of the consumer as they can be learned or deciphered?

10 A- From research, they use what they learn about those needs and wants and personalities, et cetera. They use selectively in such a way that that brand will be successful with the group of people they're targeting.

Q- Yes.

15 A- Okay. They don't work in a vacuum and they don't use everything they learn. And the more research money you spend, the more information you get about the consumer, and based on that information, you would use selectively, depending on what you want to do in your
20 advertising strategy.

Q- I want to have it clear from you, Doctor.

A- Yes.

Q- Is the name of the game to respond to the desires of the consumer?

25 A- Not necessarily. You're using what you understand about

consumers. You know...

Q- Well, do you try to find out what they don't want and give them that?

A- No, certainly not.

5 Q- No, you try to find out what they do want.

A- Well, that's the basic philosophy of marketing, is to provide products that consumers want. That's the basic philosophy of marketing.

Q- M'hm.

10 A- Okay? But what you do when you do a large scale research is to try to find an angle that you can use to attract consumers to your product because you know that that's the only thing you can do. Otherwise they will choose another brand, because your brand is so similar to your competitor's brand.

15 Q- Right. And if you give them something they don't like and that does not respond to their needs, as you say, they'll go somewhere else?

A- Of course. You haven't done your job properly.

20 Q- Yes. And you said a second ago that what you do is you have to go after that target, try to identify the target...

A- Yes.

25 Q- ... and try to find out the desires and wants of that target and respond to that target? Is that correct?

A- Use, that's what I said. You use what you learn about the target.

Q- Yes, okay. And do I take it that in developing advertising, then, using the tool, the information that you have collected...

A- Yes.

Q- ... about the target, you will develop advertising which you hope will respond to that target or which will bring a response in that target?

A- Would attract.

Q- Yes.

A- Would attract those people to your advertising and hopefully to your brand.

Q- All right. And is it possible, Doctor, that in aiming at that target and developing advertising for that target and sending out a message by the advertising to that target, that you might obtain unfavorable reactions among people who are not in the target?

A- I'm sorry, I didn't understand.

Q- By trying to please the target, might you be displeasing other people?

A- That would be real rare, because advertisings tend to be real positive. I know that there have been some negative instances of people reacting to female hygiene commercials on television, and it was mostly males who

found that...

Q- Yes. I haven't bought any of that stuff since then.

A- Okay. I'm sure you haven't. But, you know, people didn't like that, so -- but most advertising is positive. I mean there's nothing in most advertising to dislike. I mean, I like -- I mean I don't buy cat food and I don't like cats. I don't own a cat. Never did. But I find some of the cat commercials on television very appealing. Very beautifully done in terms of a piece of art.

Q- And do you run out and buy the product?

A- No. As I say, I don't like cats.

Q- Yes.

A- But I like the advertising. And I'd say most people would react positively to advertising, whether or not they want to buy the product.

Q- Okay. These preferences between the Pepsi drinkers and the Coke drinkers.

A- Yes.

Q- Are they real human preferences or are they artificial preferences?

A- Well, they were preferences that were created on a psychological basis, okay, what you call a psychological angle, okay. And you do that because your product really is not different. I mean, Coke and Pepsi,

5 there's not that much of a difference, so you really
created an image that you hope will appeal to a large
number of people and you've got to keep your customer in
or attract a large number of the newcomers into the
marketplace because that's an important point. And when
Coke and Pepsi go after the market, they all spend a lot
on advertising, and what's happening is that they win
two (2) ways, okay. They win by attracting new users of
colas and they win by attracting consumers from smaller
10 competitors. So the big gets bigger.

Q- That differentiation of Coke and Pepsi.

A- Yes.

Q- How is that differentiation done? Is it done otherwise
than by advertising?

15 A- As far as I know it's been done by advertising. There
may be some minor differences in terms of the amount of
sugar in it, but this is minor. I understand that Pepsi
uses a slightly higher sugar level in Quebec than in the
U.S.

20 Q- Doctor, I don't want to be unfair to you. I think what
you're saying is that the product....

A- But it's mostly advertising.

Q- ...difference is minimal and that the differentiation is
essentially through advertising?

25 A- Yes.

Q- Yes.

A- The products are similar.

Q- Now, in a mature market, isn't it a common thing to see proliferation of brands?

5 A- Okay. Which definition of mature market are you using?

Q- I'm going to use yours.

A- Mine or the saturation.

Q- We're into mature....

A- Yes.

10 Q- ...or saturation...

A- That's right.

Q- ...where we've passed growth.

A- Okay. Sure.

Q- Isn't it a common thing to see proliferation of brands?

15 A- Okay. As a market gets developed, what you have is every manufacturer offering their own version of the product that corresponds to the average in the marketplace. And then you have the product development strategy coming into place and then you have different
20 versions. You know, light versions and cholesterol free versions and fibre versions and oat versions, et cetera, et cetera. And you have a very large proliferation of brands eventually which tends to be dysfunctional quite often.

25 Q- I'm asking you, is it a common thing to see

proliferation of brands?

A- In some consumer products, yes.

Q- Yes.

A- Yes.

5 Q- And is it for the same reason, because you're going after brand loyalty or brand family loyalty?

A- Well, that depends on the different industry. In some industry you have loyalty, in other industries, you have a very high level of loyalty.

10 Q- Would you please tell me why it is we see proliferation of brands in mature markets? Why do we see it? What's the reason for it.

A- Well, the reason for it is to try to grasp as much of the market as possible, and I'm including there users and new users. Current users and new users, okay.

15 Now, it's a -- the application of segmentation is such that by adding a new brand into the marketplace you're basically attracting both users and nonusers, or new users if you want, into the marketplace. And by trying to do that is you're trying to satisfy the particular needs of smaller groups, okay. That's what you use segmentation for.

20 Q- It's because you're trying to be more and more discreet about responding to particular groups' desires and wants?

25

A- Yes.

Q- Yes. Doctor, I have a few pages of your book: "Gestion de la publicité," which I'd like to show you.

5 A- These are the translations of my advertising text, marked Advertising Management in Canada, which by the way is being revised now. There will be a new edition next year.

Q- Is there any problem using this?

10 A- No. No, should be a translation, but I didn't do the translation myself. It was Dr. Jacques Brisoux who did the translation and that's why he's added as an author.

Q- I see. And he was your doctoral student?

A- That's correct.

Q- Wasn't he?

15 A- That's correct.

Q- Well, if we run into a problem with the French, we'll blame him. How's that?

A- Well, that's what I'm saying. I didn't do the translation. It's not my French.

20 Q- All right. I'm starting at page five fifty-three (553). And I'm in the bottom -- the right-hand column.

A- Yes.

Q- In the long long paragraph, I'm in the bottom part. And you're talking here about emotional appeals.

25 A- Yes.

Q- To consumers.

A- M'hm.

Q- And you say:

"Pour ces spécialistes ..."

5 -- can you see me there, Doctor?

A- Yes.

Q- "Pour ces spécialistes, même des motifs très
émotionnels sont rationnels parce que le
comportement du consommateur est un comportement
10 essentiellement rationnel. Le problème de nombreux
critiques ..."

-- and I think there it's critiques de la publicité?

A- M'hm.

Q- "... est qu'ils refusent d'accorder la
15 rationalité aux individus ayant des valeurs
ou des normes de comportement différentes des
leurs."

Now, Doctor, what I take it that you're saying there and
saying to your students and to the people that you hope
20 buy your book rather than the Kotler's book.

A- Well, Kotler has not written advertising book.

Q- No?

A- No. Something is missing.

Q- Well, you hope people buy this book rather than other
25 people's books, don't you?

A- Yes.

Q- Yes.

A- Well, they're buying this book.

Q- Oh, good. And so they're getting that message at the
5 bottom of that paragraph?

A- Right.

Q- And I take it that the message you want to give them,
Doctor...

A- Yes.

Q- ... is that when you see an ad which appears to have a
10 high emotional content ...

A- M'hm.

Q- ...or a content with which you might disagree, it
doesn't mean that it is manipulating the consumer, it
15 means that the consumer has his own motivations, will
respond in his own way...

A- M'hm.

Q- ... and makes his own rational choice; isn't that what
you're saying?

A- Yes, you're basically trying to influence the behaviour
20 of consumers from what you know about his total
behaviour. I'm talking about the hierarchy of effect
model of this morning.

Q- Yes.

A- We know what he likes, we know his preference, we know
25

-- we know a number of things about the consumers. And, of course, the more money you have for research, the better you can find out what the consumers like. And basically what you do, as I think I mentioned --

5 answered that before, is that you use what you learned from your research to try to find an angle, okay, or a handle to...

Q- To please him?

A- Yes, to attract him emotionally, psychologically,

10 rationally, or you call cognitively in psychology, to the message.

Q- I'm trying to get ...

A- Yes.

Q- ...at what you mean by those lines, Doctor?

15 A- Yes.

Q- And I take it that what...

A- I think I just explained what I mean.

Q- Well, I take it that what you mean by that...

A- Yes.

20 Q- ...is that each individual's choice is his own. It's rational to him, makes sense to him and he decides?

A- Of course. Of course.

Q- Is that what you mean?

A- Oh, definitely.

25 Q- Yes. So I take it that what you're saying is that from

the point of view of an expert in marketing and advertising, there's nothing wrong with using emotional content in an ad?

5 A- You're talking to consumers in their -- in the language they like to hear.

Q- Right.

A- Okay. But you're very selective on that, too, as an advertiser.

10 Q- Okay. And you say on page five fifty-four (554), at the bottom of the full paragraph on five fifty-four (554), after continuing this discussion about emotional content or exaggerate its content in ads, you say at the very bottom of that paragraph:

15 "De telles annonces publicitaires sont efficaces non pas parce qu'elles sont exagérées, mais plutôt parce qu'elles touchent à de bonnes motivations des consommateurs."

20 I think you're saying the same thing, aren't you? You're saying that they are successful because they speak the consumer's language and are clever at getting to what the consumer wants. Isn't that right?

25 A- Okay, that's basically -- that's talking about exaggerated claims, okay, and what we're basically saying here is that consumers will respond to the exaggerated claim but we'll kind of discount them a

little bit. You know, he's talking about the cartes de souhait, the greeting cards, et cetera.

And -- but basically, that's the same answer as before in the sense that you're responding to what you've learned about consumers and you're doing it in a selective way. And, of course, the only way you're going to obtain or reach a large change in behaviour is by your high reputation.

Q- M'hm.

A- And we saw from the -- you know, some product advertisers use a very high frequency in their advertising, in addition to high reach, and the higher the frequency of the message, the more likely you'll be able to affect a change in consumers.

18/007815 Q- Well, Doctor, what about that high repetition?

A- Yes.

Q- In your opinion, what is the effect of the high repetition message...

A- Yes.

20 Q- ... on someone who is clearly outside the target group? Let's say someone so far outside the target group that he has decided that he doesn't want to smoke.

A- Okay.

Q- What is the effect...

25 A- You mean smoking.

Q- ... of a highly repetitive message on that man?

A- Okay. If somebody is very committed, okay -- again that's a rare exception in marketing, that -- at least not in the majority of the market -- that he doesn't want to smoke, what the high repetition of the message is going to be, it's going to try to shift, it will shift some of his -- some of his behaviour, psychological behaviour, all right, and in the short run of course, you won't get him to buy, if he's really far right, at the end of the spectrum, okay, but he will shift him.

In other words, even somebody who has decided not to smoke may respond positively to a nice advertisement. Like I say, I don't like cats, but I like cat food commercials. In other words, I learn from my -- I learn from listening to those cat food commercials, all right? I've learned the information. In other words, the cognitive aspect of the message is there. I've learned to like the commercial, okay, that's called attitude toward the ad, I've learned to like the commercial, okay. It doesn't mean that I'm going to go out and buy the cat food, okay?

So basically, your behaviour has shifted, in a sense, all right, in the short run, and if you do it over and over and over and over and over again, you

know, you may shift the person slowly and slowly. Maybe I'll get to like cats after all, you know...

Q- You're telling me, Doctor...

A- ... if the commercial frequency is high enough. And I
5 imagine what would happen to somebody who is not committed, somebody who is really, really between two (2) chairs, which really is at the equilibrium point, and that's really -- that's really what advertising does best, is get somebody who is at the equilibrium point
10 and get him to switch. Understand what I mean?

Q- Yes, I do, Doctor, but there is a paragraph in here which makes me wonder about what you're saying. It's at page five fifty-six (556).

A- Five fifty-six (556).

15 Q- And before we get to the precise lines that I'm talking about, is it true that there's such a thing as advertising saturation, that people, adults can be saturated by it and that they reach a saturation point?

A- That's for all of advertising.

20 Q- For all advertising.

A- That's for all. If you add up all the commercials...

Q- Yes.

A- ... if you add up all the messages, yes, you have saturation. That's what you have -- you know, you have
25 -- you don't attend to every little commercial, you

attend to the ones that interest you.

Q- Okay. Now, what about page five fifty-six (556), the right-hand column.

A- M'hm.

5 Q- The bottom of that first incomplete paragraph.

A- Yes.

Q- Okay. I read about a study done by other authors, and the result is:

"Les enfants sont sujets aux ..."

10 -- comme les adultes --

"Les enfants sont sujets aux effets de la saturation publicitaire. Après un certain nombre de répétitions du message, les effets de la publicité deviendraient alors négatifs."

15 What does that mean, Doctor?

A- I...

THE COURT:

Quelle page?

Me POTTER:

20 Pardon. Cinq cent cinquante-six (556), Votre Seigneurie.

THE COURT:

Oui. Où?

Me POTTER:

25 Au tiers de la page. Colonne de droite. Ici. C'est

juste en haut du deuxième paragraphe.

THE COURT:

Une autre étude faite?

Me POTTER:

5 Oui, oui.

Q- Well, what does that mean, Doctor?

A- Well, I'm not sure unless I look back at the reference
forty-one (41), but basically the only... as far as I
know, the only one you're going to have a negative
10 result of advertising is if you play the same commercial
too many times.

 There is some research that is done that is called
"The Wear Out Effect of Advertising" and if you're using
some -- you know, if you say the same joke ten (10)
15 times, you know, you may laugh at it ten (10) times, but
by the time you get to twenty (20) and thirty (30), the
joke is not funny anymore and people start to dislike
the commercial. That's the only time I can remember
where people would become negative, where probably
20 what's reflected here is what was in the reference.
Don't forget, when we're writing a textbook, we try to
reflect what some people are saying. It doesn't mean
necessarily that we agree with them, but we reflect what
they're saying. We're trying to give a balanced view of
25 the topic, okay? So this is to show the students both

sides of the picture.

Q- Well, do you agree?

A- Now, it doesn't mean that -- I don't agree that --
unless we are talking about the same execution being
5 played over and over and over again, I don't see why you
have negative effect of advertising. I really don't see
that.

The only way -- it's what they call the way-out
curve, is that as the commercial gets played, it gets
10 attention -- I'm sure you've seen annoying commercials,
you know, ten (10), times, you know, you say: "Gee, I
don't want to hear that joke anymore, I don't want to
hear that execution anymore", okay -- so if the
frequency is too high, then you start reacting
15 negatively to advertising. Okay? But that's really
true for television commercials and I suspect this is
what they are talking about in here because...

Q- So as a general proposition, you disagree with that
statement?

20 A- Well, as a general proposition, yes.

Q- Okay. Well, Doctor, I'm going to sit down in a minute,
but just before I do, I'd like you to tell us your
opinion, using your graph of the product life cycle, you
tell us where the Canadian cigarette market is today?

25 A- Okay. My view, and again, I'm not an expert in the

Canadian cigarette market, I'm just a marketing expert,
so I'm going to tell you my view as I see it now, okay.
It's a market that is dominated by three (3) major
companies. It's a market that is fairly sophisticated
5 in terms of the segmentation that is taking place.
There's a high amount of research that takes place.
It's a market where you have a large proliferation of
brands. It's a market where you have many many
undercurrents, okay. You have people who experiment
10 with cigarettes, you have people who decide they don't
like cigarettes and the rejecters, which is a small
group. You have people who want to quit. You have
people who quit temporarily and come back. You have
people who quit more permanently. So you have a lot of
15 undercurrent. And if you look at the undercurrent, one
will cancel the other.

For example, the quitters are the people who leave
the market for other reasons that I'm not going to talk
about, unless you want me to, are replaced by the new
20 users, okay. And some of the new users replace some of
the quitters and so on and so forth.

Now, the statistics that I've seen and I could -- I
can't, I'm not an expert, tend to suggest to me that the
volume of cigarettes sold is still on the increase.
25 Q- I'm sorry. You've seen statistics showing the volume

going up?

A- Yes.

Q- Who's shown you those?

A- I've seen a graph somewhere.

5 Q- M'hm.

A- I think it was one of the ITL documents, I believe. But
the information that I have is that the total volume of
cigarettes in billions, I think the graph was nineteen
eighty-five (1985), so I cannot vouch for nineteen
10 eighty -- the recent -- the recent data. And so the
total amount, the total volume, and if you multiply it
by the price, which is increasing, I would say it would
increase even more. So in terms of total volume it's
still increasing.

15 Now, I know that the -- what I understand is the
percentage of smokers, adult smokers is decreasing, but
that they smoke more per capita. Okay. But that's the
extent of what I know of the cigarette market.

Q- Well...

20 A- But you have a large number of people who are coming in
the market all the time.

Q- Would you place it for me on your graph?

A- I...

THE COURT:

25 I think that was the question, wasn't it?

Me POTTER:

That was the question, yes, My Lord.

A- Oh, place the cigarette market on the graph?

Q- Yes.

5 A- Oh, sorry. Sorry. So it will be -- you will still be growing, so...

Q- You say the cigarette market's still growing?

A- Yes.

Q- M'hm.

10 A- So it will be into the growth maturity.

Q- You put cigarette...

A- Growth maturity.

Q- The Canadian cigarette market in the growth portion of maturity?

15 A- Yes. Well, not growth portion. My definition of maturity is a growth maturity, okay. My definition of ...

Q- Yes.

A- My definition of maturity is growth maturity.

20 Q- Growth maturity.

A- Not saturation.

Q- Not saturation.

A- Yes.

25 Q- And you say that because you've seen this graph showing increase...

A- But like I say, I didn't study it. So I have to
profess...

Q- I just want to see on what basis you're saying this.

A- Yes.

5 Q- Because on the basis of the information you've got from
somewhere that sales are going up.

A- Total billion cigarette are going up. I've seen that,
till nineteen eighty-five (1985).

Q- I see. Thank you, Doctor.

10 THE COURT:

Are you giving a number to his...

Me POTTER:

Oh, yes, please.

THE GREFFIER:

15 ITL-42.

Me THIBAudeau:

Je sais pas, Votre Seigneurie, il est rendu trois heures
et quart (15:15). Je serais prêt à commencer tout de
suite, mais...

20 THE COURT:

En avez-vous pour longtemps?

Ne THIBAudeau:

Moi, je crois que j'en ai pour pas plus d'une (1) heure,
peut-être un peu moins même.

25

THE COURT:

We're going to break.

SHORT RECESS

5

CROSS-EXAMINATION BY Me GEORGES R. THIBAUDEAU

on behalf of Petitioner, RJR-Macdonald Inc.

Q- Dr. Laroche, on the issue more strictly now of
advertising, would you agree with me that the
10 advertiser, in order to succeed in communicating his
message to consumers, is facing some important and
serious obstacles?

A- By saying that advertising has -- communication has
barriers, yes. There's some barriers to communication,
15 of course.

Q- We often refer in the literature on the subject to the
consumer's perceptual defense mechanism?

A- That's correct. On a perceptual basis.

Q- Yes. On a perceptual basis.

20 A- Yes. Because there's different levels of consumer
behaviour.

Q- M'hm. Now, among those defense mechanisms, one which
was referred to in your book at pages one seventy-nine
(179) and following is selective attention.

25 A- Yes.

Q- That's your book on Advertising Management.

A- Yes.

Q- Do you recall that?

A- What page?

5 Q- One seventy-nine (179). That's okay. I will have
copies.

Me IRVING:

When we have the original, why have copies?

Me BAKER:

10 Here they are.

Me THIBAUDEAU:

That will be easier for everyone, I suppose.

A- All right. So you're referring to selective attention?

Q- Yes. M'hm. And you wrote:

15 "Individuals filter and perceive only a small
proportion of the stimuli to which they are
exposed. This phenomenon is inherent in all
communication processes and especially in
those emanating from objects and products."

20 That is your opinion on what is selective attention.

A- Yes, you have to put that into context, of course, is
that selective attention is a perceptual process. It's
when people are faced with a large amount of
information. I think it's been said that the large
25 number of stimuli, that the commercial nature that

consumers have been exposed to and to defend themselves against that over -- that extended amount of information, they only attend to a small portion of that information and that's why it's critically important for marketers and advertisers to have high frequency and spend a lot of money in advertising. Because by using a lot of advertising, then you can go around selective attention and some of the other perceptual processes which I believe you're going to cover.

Q- Yes, but you continue on at page one and eighty (180) by saying, at the end of that first paragraph:

"But more than any others, mass communications and especially advertising are affected by the selective attention of audiences."

Is that correct?

A- That's correct. That's correct. That's why you need a lot of advertising to overcome that hurdle.

Q- Now, you go into the reasons after that ...

A- M'hm.

Q- ...for the existence of selective attention insofar as it relates particularly to advertising.

A- M'hm.

Q- One of them, the third reason at the end of the next paragraph is:

"Finally individuals, and especially

consumers, develop the kind of reflex that permits them to filter and reject the largest proportion of the information that is irrelevant to their needs and/or wants.

5 On the other hand, selective attention mechanisms permit them to select only the type of information in which they have some interest."

A- That's right.

10 Q- Is that not the correct...

A- Yes, that's correct. In other words...

Q- ...definition of the problem of selective attention that advertisers face?

A- Exactly. That's exactly right. What you have to do is
15 that among the information that's available, you only pick out what you find of interest to you, okay. Not necessarily as a buying need, but of interest to you. If you see a pretty girl, you may get attracted to that commercial or that ad, if you're male. It doesn't mean
20 that you have a product need, you understand what I mean, in advertising. And that's why you see a lot of that technique, using advertising to attract attention. And the purpose, of course, is go around the selective attention mechanism.

25 Q- And then you go on into selective distortion.

A- That's correct.

Q- I think it is self-explanatory. The Court now has the text.

5 Now, is that basically though, when you talk of selective distortion, selective attention and so forth...

A- Yes.

10 Q- ... one of the reasons why it's extremely important to marketers to find out what the interests of the target consumers are so that what they tell them can be congruent to their needs and wants.

15 A- Yes, what you have to do is you do two (2) things to overcome those processes. It's, first of all, to find out what interests are affecting those processes, general interest, okay. And, again, it's general interest. And then, to find some means through research to overcome those hurdles. And that's why it's extremely important to do copy testing, which is testing of the ad after it's been done, to make sure that what was encapsulated in the message is the way that
20 consumers are going to perceive the information, the way you want them to perceive the information.

25 Q- Now if, then, a company has a strategy which consists of attracting new users, then, in that same vein, it would be extremely important for that company, for that

marketer, to test where the new users are targeted, is that not correct?

5 A- Well, it would ideally be important to do that, yes, if you can do it. Okay. We're talking about companies who have a lot of money, because a lot of small companies don't have research budgets to undertake those -- that research project.

Q- And in spite, of course, of all that sophistication in the research...

10 A- M'hm.

Q- ... you yourself report in your book, and I think we've...

A- Yes.

15 Q- ... seen it yesterday in Exhibit AG-179 -- that more than -- or somewhere around eighty percent (80%) of all new products introduced to the market fail, they are rejected by consumers.

20 A- Yes, I'd like to make a correction to that because this is an old data. This is from -- and I apologize, I don't know how it found its way in the book at that stage, but that data, that statistics dates from Booz and Hamilton, I believe, if you look at the reference, it's nineteen sixty-five (1965), I believe. There was some -- the more recent Conference Board study, which is
25 nineteen eighty (1980), the National Conference Board,

which is a U.S. company, has put the failure rate at about nineteen eighty (1980), at about one-third.

Q- One-third.

A- One-third. That's the current, the more current
5 information in terms of product failure. What happened is that initially...

Q- So it shows us that marketing is still a very imperfect science.

A- It shows it's still imperfect, but it shows that we made
10 a lot of progress in weeding out bad propositions in the marketplace, so. Still one-third off, but I'm sure we'll get better in the future.

Q- Now, in your report at page fourteen (14).

A- Yes.

15 Q- You make a comment about "la publicité à titre gracieux."

A- Yes.

Q- And what you say about it is:

20 "La publicité à titre gracieux recouvre toutes les activités destinées à assurer gratuitement l'obtention d'espace et/ou de temps dans tous les types de médias, imprimés ou diffusés, en vue d'aider la vente des produits et des services d'une entreprise. Cette forme de
25 publicité est très efficace, car elle jouit

d'une grande crédibilité."

So here you're talking of a company that would be successful in having newspaper articles and things of the like written about their products.

5 A- That's right. You can get a journalist. You can get a journalist to write a story on your product. That would be free.

Q- But my first reaction to this is, however good you can be at that, I suppose that very seldom you'll be able to have regular newspaper coverage of your products. Is that correct?

A- Well, it depends on how good your PR person is. PR means public relations.

Q- But it will be always relatively infrequent, I assume?

15 A- Well, it depends on the newsworthiness of your product and, you know, if you're making constant improvement, you know, you may get some free publicity. Yes.

Q- And the reason why, as you say, this is very important is that there is a high source credibility there?

20 A- Yes, because the journalist is assumed to be independent of the manufacturer. Because of that, then the credibility of the source of the journalist is higher than if he emanates directly from the manufacturer, which is what advertising does.

25 Q- And could we assume, Dr. Laroche, that if the contrary

is true that that type of coverage in the paper gives negative publicity to the product?

A- M'hm. Yes.

5

Q- Then you have -- the marketer, the advertiser will have a serious problem?

A- Yes. Of course, the volume will depend on how much it is, you know, and how long it has sustained.

Q- Of course.

A- Okay.

10

Q- Of course.

A- So, you know.

Q- Now, next in your report, at page fourteen (14) -- pages fourteen (14) and fifteen (15), you talk about marketing strategies for products with short purchase cycles.

15

A- M'hm.

Q- I suppose we would all easily agree that cigarettes fall into that category?

A- Yes.

20

Q- Now, among other things in that report, you say that one of the companies -- one of the manufacturers' strategies could be to:

25

"... attirer de nouveaux utilisateurs du produit vers sa marque, en expliquant par exemple comment certains besoins sont satisfaits par le produit et la marque."

A- M'hm.

Q- Now, this again presupposes, of course, a cogent -- a cogent marketing plan in order to direct -- to direct your product to new users.

5 A- But that's a strategy. How it's implemented depends on the company, yes.

Q- Yes. Now, even -- that is not -- is it not fair to say that all advertising can do in particular -- in that particular case of short purchase cycle products, would
10 be to generate trials?

A- All advertising can do is generate trial?

Q- Yes.

A- No, you have a -- you have all the strategies, I think. Advertising in short purchase cycle can do a number of
15 things. One of them could be to generate trial, but another one could be to get people to keep, you know, stay loyal to their brand. Other...

Q- No, we're talking about new users now.

A- Oh, for new users.

20 Q- And even for switchers. You're trying to generate trial, is that not what you're trying to...

A- Well, for new users, well, you hope that you go beyond trial. I mean, trial is just a first step, but you know, you want -- beyond that you want to develop a
25 long-term commitment to your brand. But a short trial

is one of them.

Q- Now, I would refer you to advertising management at page two fifty-three (253).

THE COURT:

5 Avez-vous donnez le numéro à...

Me THIBAUDEAU:

Oh, pardon.

THE COURT:

Ah, c'est celui-là

10 Me THIBAUDEAU:

...j'ai oublié de donner le numéro qui sera RJR-180.

THE COURT:

Est-ce que c'est le même livre ?

Me THIBAUDEAU:

15 Oui, c'est toujours le même livre, votre seigneurie.

Q- A la page deux cent cinquante trois (253) monsieur Laroche?

A- M'hm.

Q- Now, you say there, at the -- on the short purchase
20 cycle market, at the end of the -- in the second paragraph of that section:

"In short, purchase cycle market advertisers
may induce buyers who buy competitive brands
to switch to the advertised brand, induce new
25 buyers of the products classed to try the

advertised brand or convince present users of the advertised brand that they should remain loyal to the brand."

A- Sure. And that refers to the three (3) paragraphs.

5 Q- That is what you said.

A- Yes.

Q- Then you detailed how you tried to do that. And in order to attract new buyers, you say:

10 "To attract new buyers advertisers should conduct a campaign that shows potential users of the product category that they have some unsatisfied needs of which they may not even be consciously aware and that the advertised brand can best fulfill these needs. This is
15 basically how the strategy would work."

A- M'hm.

Q- Now, is that not fair to say that, especially for the products of that nature, a consumer would normally immediately experiment with the product after making his
20 purchase and he would have post-purchase feelings and ...

A- I'm sorry. I don't follow you.

Q- Once a purchase is made.

A- Yes. Once a new user has tried the brand?

25 Q- Yes.

A- Yes, they try the brand and they like it or dislike it.

Q- Yes.

A- They either reject it or become a regular user.

Q- M'hm. And in respect of -- we'll give a number to this
5 extract first. It will be RJR-181.

Now, I would refer you to your treatise at -- still
the advertising management, at page two hundred and
forty-five (245).

Now, you write in the bottom right-hand side
10 column:

"An advertising message implicitly or
explicitly promises a buyer a certain level of
satisfaction through the purchase and
consumption of the advertised product or
15 service."

A- Yes, that's a general statement.

Q- And then at the end of page two forty-six (246).

THE COURT:

Where are you reading from?

20 Me THIBAudeau:

Je m'excuse, Votre Seigneurie, c'est la titre: "The
role of advertising in post-usage feelings," à la page
deux cinq quarante-cinq (2545), c'est en bas à droit.

THE COURT:

25 Où?

Me THIBAUDEAU:

"An advertising message implicitly or explicitly promises a buyer a certain level of satisfaction through the purchase and consumption of the advertised product or service."

This is what the advertising does.

A- M'hm.

Q- And then at the end of that section, at page two hundred and forty-six (246), the last sentence:

"It may be easy to raise a buyer's expectations to sell a product, but if the product's performance does not meet these expectations, consumers will inevitably be dissatisfied and will not repeat their purchases."

A- M'hm.

Q- Is that...

A- Sure. I mean, that's a general statement. You know, you try a product, you don't like it, you don't use it. Okay. You reject it.

Q- Exactly.

A- Yes.

Q- And once a consumer has decided that he doesn't like the product, he's experimented with it...

A- Well, unless they come back with an improved version of it and he tries it again, maybe he tries it a second time. A lot of beer drinkers started drinking beer and not like it the first time, but they keep drinking beer and now...

Q- So you're talking of other product improvements?

A- You have to try...

Yes, well, you don't make decisions forever. I mean you try something, you didn't like it, maybe you want to try it another time, you don't like, and eventually you may like it, you may not like it. It's just whatever conditions there are at the time that you're trying it. It's a temporary situation that you may or may not like. That's human behaviour.

Q- Now, in your report at page forty-two (42) -- I'm sorry, is it forty-two (42), now? I'm sorry, it's forty-three (43), in your description of approaches to creation, you essentially give us three (3) categories of advertising. The first would be: "l'approche du groupe-cible." In English it would be target...

A- Target.

Q- ...market advertising?

A- Target group. Target group.

Q- Target group advertising. The second one is the motivation approach?

A- Yes. The reason why approach. It's one of the oldest forms of advertising.

Q- And the third one is suggestive advertising, is that correct?

5 A- Yes. Yes.

Q- Now, my first question on this is that to the trained eye, would that -- would that be categories of advertising that are distinguishable, that you could recognize?

10 A- Yes, those are the types of approach that creative director will normally use them. And it's one taxonomy, it's not the only one, taxonomy. We don't pretend to have the only one.

Q- Well, that's the one that you use in your...

15 A- But it's one taxonomy that you would use. The group -- the target group approach is an approach that attempts to say: well, this is a group that you really would like to be a member of. They use product X, you should use the same product. That's basically what it's telling them. It's not -- motivationally it's not that effective, because they don't really tie the group with the product.

The second one is ...

20 Q- How, in more concrete terms would we recognize such an ad? What does it look like compared to other types of

25

ads?

5 A- Okay. If you look at an ad and it says that to be a member of a group you should belong there, you should -- you see a group of people, you see the example of a, you know, certain social class, a lifestyle, somebody with a certain appearance that denotes a certain group. So if you get the impression, by looking at the ad, that the ad promotes a certain lifestyle or certain group, then that will be under the first example, the first ad.

10 Q- And what is the limitation of the effectiveness of this type of ad that you were talking about?

15 A- Yes. Well, the limitation is that you don't really tie the product with a group in a way that is unique to your product. In other words, anybody can use it. Your competitor can do the same thing, you know. If you use a boat, he uses a boat. If you use a bicycle, he uses a bicycle. If you use a certain group, he uses a certain group. That's something that can be copied quite easily. In other words, it doesn't say why your brand is better than his. So that's -- in that reason, the motivation itself, the handle to get him to buy your brand is not as strong as the next one, what you're really telling him is the reason why. You know, drink because it's better tasting or buy because it's longer lasting, et cetera.

20

25

Q- Yes. This is the motivation approach that you're talking about?

A- That's the motivation approach, which is one of the oldest ones, called the reason why approach. You have to give a consumer a reason why. And that -- the reason why is the m.o. related to the product. So it's a product related strategy.

Q- I see.

A- Yes.

Q- So would that -- would it be fair to say that whenever an ad uses a motivation approach, it will mean that the advertiser is making some kind of a claim on his product ...

A- That's correct.

Q- ...that the consumer would have to recognize in order to find the rationale for.

A- Well, you have to tell the consumer why you want to. And a good example is the bar, O'Henry bar, you know, you should eat it because it's longer. I don't know if you've seen the ads of the -- you have a box and you have an O'Henry and the O'Henry bar doesn't fit the box. And then you say: any other bar will fit. Okay. Which tells you that it's longer, therefore you can have more satisfaction by eating the chocolate bar. So that's the reason why, you get more for your money. More

satisfaction, taste satisfaction. And the last one is...

Q- So this -- is this mainly the category is which, according to your report, the advertiser there is trying either to remove a negative stimulus that would prevent purchase or conversely to add a positive stimuli or rationale that would induce buying?

A- Yes, the diagram on page forty-four (44) explains the motivation approach. So if you have a consumer who is at the equilibrium point, then you try to shift the equilibrium by using a number of strategies, like you just listed. And the way you also do it, too, once you've selected the strategy, is the six (6) description -- direct description, inference, demonstration before and after, comparative advertising, advertising with a credible source and U.S.P. or differential advantage, which is the U.S.P. -- unique selling proposition approach.

Q- Yes. M'hm. So that is another category of advertising, of course, which would be very recognizable because you give, you provide a distinct product benefit?

A- That's correct.

Q- Such as Cascade will clean your dishes better...

A- Better.

Q- ...things like that?

A- That's correct. If you compare that to your competitor, then of course you're trying to get your competitors to come to you.

Q- Yes, exactly.

5 A- But you have to make a direct comparison.

Q- And would it be fair to say that when you use that it is in order to attract a new user that knows the product but that would not be using it up to then, that is the type of advertising that you would try to use particularly?

10

A- For a new user?

Q- Yes, to give him a rationale. You're trying to give him a rationale to buy the product.

15

A- If that's the one you want to use, but you can also use a target group approach, you can even use the suggestive approach. It depends. For a new user, you have to look at, you know, which ones seem to fit best your strategy. But you can use any one of those for new users, yes.

20

Q- Yes. You've mentioned the suggestive approach. Now, how do we recognize that. What type of ads are we talking about?

25

A- Okay. A suggestive approach just tries to give you some good feeling with that -- either associated with a reason why, okay, group -- a target group, be a member of the group, or a reason why if you buy the product it

will give you that much satisfaction. So those kinds of approach where they tend to be -- tend to be more indirect or, you know, a lot of the Japanese ads, for example, are very suggestive and you don't even know the product that is sold until you get to the end of the commercial. And that's a pure example of the suggestive approach.

So what you do is that you make people feel good. You show them some cats, you show them some babies and then at the end you tell them what's the product that you're selling.

Q- I would refer you to advertising management, again, at page three hundred and fifty-seven (357).

THE COURT:

You haven't given a number to page two forty-two (242) and on.

Me THIBAudeau:

We'll produce that then, My Lord, as Exhibit RJR-182.

Q- Now, in the extract, Doctor, perhaps we can quote immediately, My Lord, so that I don't forget once more, as RJR-183.

I would refer you to page three fifty-seven (357), under the caption: "Suggestive Advertising." And you say in there:

"All the advertisements that have been

discussed so far attempt to give consumers a rationale, an argument or a reason why they should buy a certain product or brand. In contrast, suggestive advertising is not concerned with emphasizing some product features or consumer benefits, but with building a positively valued brand image in the target market segment."

10 A- M'hm.

Q- "The objective is to ensure that consumers will have developed sufficiently positive attitudes towards the advertised brand and that they will consider purchasing it whenever the need or the occasion arises. Such an approach is the best when the brands in a certain product category are fairly similar since there is no strong physical product differentiation on which to build effective U.S.P.s ..."

-- and again, it's a "unique selling proposition" --
"... or to use a basic selling argument. Such product categories include cigarettes, perfume and so forth."

25 Is that not what you have written?

A- Yes.

Q- Now, you continue on to cite David Ogilvy, I believe.

A- Yes.

Q- In "Confessions of An Advertising Man." I suppose that
5 in that context you are referring to him with some
degree of approval, Dr. Laroche?

A- Well, he's a well-known personality in the field of
advertising. He was a creative director at Ogilvy and
Mather.

10 Q- And in that quote, at page three fifty-eight (358),
among other things, David Ogilvy writes at subparagraph
three (3) on the left-hand side column.

A- "Give the facts..."

Q- "Give the facts. The consumer isn't a moron,
15 she's your wife. You insult her intelligence
if you assume that a mere slogan or a few
vapid adjectives will persuade her to buy
anything. She wants all the information you
can give her."

20 Does that correspond to your opinion?

A- Well, that's the way he says it. I wouldn't say it that
way. I don't agree with the statement that she wants
all the information he can give her. There is such a
thing as giving too much information.

25 Q- Yes.

A- There's a degree of how much information you can give.

Q- There's a degree...

A- Yes.

Q- But yet you must give her the relevant information that
5 she needs.

A- Well, that's what he says. Now -- yes.

Q- And then at subparagraph ten (10) on the right-hand
side, particularly referring, I suppose, to what we've
just been talking about, the brand personality,

10 "The image and the brand, it is a total
personality of a brand rather than any trivial
product difference which decides its ultimate
position in the market."

A- M'hm. Yes.

15 Q- Is that not basically what you're trying to do when
you're doing

A- But if all...

Q- ...suggestive advertising, as you've just written, Dr.
Laroche?

20 A- Well, this is more general.

Q- It's a question of brand personality?

A- This is more general. Really that whole paragraph in
there: "The Confessions of an Advertising Man," the way
it was put in there is really a wrap-up to the whole
25 section that starts -- that starts, "Advertising Message

Creations." It's really a wrap-up to that whole section. That's not advertising message content, sorry, at three forty-three (343), is not meant to be ...

Q- Only related to suggestive advertising?

5 A- No, not necessarily.

Q- Oh, I realize that, Dr. Laroche. I'm just referring...

A- But that's a general -- okay. That's a general statement.

Q- ...to number ten (10) now.

10 A- Number ten (10) is a general statement that I -- I don't disagree with that at all.

Q- You don't disagree with that?

A- No.

Q- And you don't disagree, I suppose, that when you...

15 A- Image.

Q- ...do suggestive or image advertising what you're trying to do is to communicate the personality of your brand to the consumer as you've written at page three hundred and fifty-seven (357).

20 A- Well, the image is more general. The image can be whatever is left out after you finish your advertising, irrespective of which approach that you follow, okay. The image is how the consumer perceives your brand after you've advertised to that consumer. That's the general
25 statement. Image is created by a number of techniques

and we went through all the different techniques, but image can be created by argumentative advertising, it can be created by target group approach, it can be created by suggestive advertising. That really is a general statement.

5

Q- But what -- let...

A- Image is important.

Q- ...us get back, though, to what you said under "Suggestive Advertising," Dr. Laroche.

10

A- Yes.

Q- Didn't you write that:

"Contrary to the motivation approach advertising, all the advertising ..."

-- which you are referring to --

15

"... all the advertisings that have been discussed so far, like motivation, et cetera, attempt to give consumers a rationale, an argument or a reason why they should buy a certain product or brand."

20

-- product or brand.

"In contrast, suggestive advertising is not concerned with emphasizing some product features or consumer benefits, but with building a positively valued brand image in the target market segment."

25

A- Yes. Yes. The main concern is...

Q- "The objective is to ensure that consumers
will have developed sufficiently positive
attitudes toward the advertising brand and
5 that they will consider purchasing it whenever
..."

A- Sure.

Q- Is that not the purpose and objective of suggestive
advertising?

10 A- Yes, suggestive advertising will build brand images, but
the others will do too.

Q- So it's in -- yes. It's in -- yes. I'm not denying
that.

A- Yes.

15 Q- But that is the purpose of suggestive advertising.

A- Certainly.

Q- It's brand personality as you refer it.

A- Yes. It's giving a positive...

Q- And you state it's particularly appropriate for
20 cigarette -- the cigarette industry. This is what...

A- Yes. Well, that's an example I gave.

Q- And you contrast that, don't you, with other categories
of advertising, like advertising using the motivation
approach.

25 A- M'hm.

Q- That's purely brand competition at this point. Trying to create a distinct personality so that your product be perceived distinctly?

A- Yes.

5 Q- From other brands?

A- Yes.

Q- You agree with that?

A- Yes.

Q- Okay. Thank you.

10 THE COURT:

C'est tout?

Me BAKER:

I have no questions, My Lord.

THE COURT:

15 Thank you.

AND FURTHER DEPONENT SAITH NOT

THE COURT:

20 So that puts us to Tuesday, ten o'clock (10H00).

Me BAKER:

For your weekend reading, My Lord, the curriculum vitae of Michael Chandler.

25 ADJOURNMENT